

UNITED STATES DISTRICT COURT
FOR THE COMMONWEALTH OF MASSACHUSETTS

DEBORAH KELLY)	
)	
Plaintiff,)	
v.)	DOCKET NO.: 05 10750 REK
)	
PAUL DONNELLY, MICHAEL BYERS, SGT.)	
KEITH JACKSON, OFFICER JOHN DOE, in their)	
individual and official capacities, and the TOWN)	
OF ROCKLAND, MASSACHUSETTS,)	
)	
Defendants.)	
)	

**DEFENDANTS' STATEMENT OF UNDISPUTED FACTS IN
SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56 and Local Rule 56.1, defendants Paul Donnelly ("Donnelly"), Michael Byers ("Byers"), Keith Jackson ("Jackson"), John Doe ("Doe") and the Town of Rockland (the "Town") submit the following statement of undisputed facts in support of their accompanying motion for summary judgment as to the claims of the plaintiff, Deborah Kelly, for use of excessive force, negligence, negligent supervision, and violation of 42 U.S.C., § 1983.

Statement of Undisputed Facts

1. On April 20, 2002, George Stoddard ("Stoddard") was the owner of residential property located at 51 Wilson Street in Rockland, Massachusetts. Deposition of George Stoddard, **Exhibit A**, at 6.
2. On April 20, 2002, the plaintiff, Deborah Kelly ("Kelly"), was living at the Stoddard residence with Mr. Stoddard. Deposition of Deborah Kelly, **Exhibit B**, at 8.

3. Since approximately 1997 or 1998, Stoddard had been involved in an ongoing dispute with one of his neighbors, Louis Rubbo ("Rubbo"), regarding the ownership of a strip of land between their respective properties. **Exhibit A**, pp. 9-10; **Exhibit B**, p.10.

4. Before April 20, 2002, the Rockland Police Department had been called to intervene in disagreements between Stoddard and Rubbo over this issue on more than thirty occasions. **Exhibit A**, p. 73.

5. On Saturday, April 20, 2002, Kelly parked her pickup truck on the side of the driveway between Stoddard's and Rubbo's homes that is adjacent to Rubbo's home. **Exhibit B**, pp. 14-16.

6. The following morning, Sunday, April 21, 2002, Stoddard noticed that all four of the tires on Kelly's truck were deflated, and that the valve stems on the tires had been pulled out and bent. **Exhibit A**, p. 30.

7. Stoddard drove to a hardware store to purchase replacement stems and, after returning, installed the stems and reinflated the tires. While Stoddard was doing so, Rubbo confronted him and demanded that he move Kelly's truck from the driveway. **Exhibit A**, p. 30.

8. After reinflating the tires on Kelly's truck, Stoddard went to a coffee shop. When he returned approximately two hours later, he discovered that the tires on Kelly's truck had been flattened again. **Exhibit A**, p.30. At this time, Stoddard exchanged words with Rubbo regarding Kelly's truck being parked in the driveway, and Rubbo threatened to call a tow truck to remove Kelly's truck if it was not moved. **Exhibit A**, pp. 31-32.

9. After this exchange, Stoddard and Kelly began working in Stoddard's yard. While they were working, at approximately 1:00 to 1:30 p.m., a tow truck arrived at the house.

Exhibit A, p. 32.

10 Stoddard spoke to the tow truck driver and maintained that the driver did not have the right to tow Kelly's truck, following which the driver appeared to indicate that he would leave. **Exhibit A**, p. 33.

11. Stoddard then saw Rubbo speaking on his cellular phone. Approximately 15 to 20 minutes thereafter, two police cruisers arrived at the scene. **Exhibit A**, pp. 34-35.

12. Stoddard spoke for a time with the police officers who had arrived, including Officer Paul Donnelly. **Exhibit A**, pp. 36-38. Officer Donnelly indicated to Stoddard that, based on the fact that the driveway is located in front of Rubbo's garage, it appeared to him that the driveway was Rubbo's property. **Exhibit A**, pp. 43-44.

13. Stoddard then spoke with Kelly, who was working in the back yard of Stoddard's house, and told her that her truck was going to be towed if she refused to move it. **Exhibit A**, p. 43-44; **Exhibit B**, pp. 21-24, 27.

14. Kelly went to the front of the house with Stoddard and spoke with another of the police officers who had arrived, Officer Michael Byers. **Exhibit A**, pp. 38-39. Officer Byers confirmed to Kelly that if she did not move her truck from the driveway within three or four minutes, it would be towed. **Exhibit A**, p. 39, **Exhibit B**, p. 24-25.

15. Kelly then walked over to her truck, opened the door and entered the vehicle. **Exhibit A**, p. 41; **Exhibit B**, p. 28. After starting the engine, she backed up the truck from the driveway onto the lawn in front of Stoddard's house. **Exhibit B**, pp. 28-30; **Exhibit A**, p. 45-48.

16. Officer Donnelly, who was adjacent to the truck, shouted to her that she was

under arrest and directed her to exit her truck.¹ **Exhibit A**, p. 47; Deposition of Richard Somers, **Exhibit C**, pp. 18-19.

17. Kelly did not immediately exit her truck in response to Officer Donnelly's order. **Exhibit C**, p. 19.

18. When Kelly failed to exit her truck, Officer Donnelly broke the window of the driver-side door of the truck with his police baton so that he could unlock and open the door. **Exhibit C**, p. 19-20; **Exhibit A**, p. 47.

19. While this was happening, Stoddard went into his house. **Exhibit A**, p. 49; **Exhibit B**, p. 32.

20. When Officer Donnelly broke the window of the truck, Kelly exited her truck through the passenger-side door and ran into Stoddard's house. She closed the door behind her, without locking it. **Exhibit B**, p. 32; **Exhibit A**, p. 50.

21. The defendants, Officers Donnelly and Byers and Sergeant Jackson pursued Kelly, opened the closed door and entered the house. **Exhibit B**, p. 32; **Exhibit C**, p. 21.

22. According to Kelly, the officers "put[] [her] to the ground and bang[ed] [her] head on the floor." **Exhibit B**, pp. 32-35.

23. Kelly testified that the officers told her to hold her hands out where they could secure them, but Kelly claims that because she was lying face down, she could not free her hands. **Exhibit B**, p. 35.

¹ The defendants assert that Kelly disobeyed their direction to stay off of Ruffo's property and that she then recklessly struck Officer Donnelly while moving her truck, which was the reason that Donnelly informed Kelly that she was under arrest. Kelly disputes this allegation. As set forth in the defendants' accompanying memorandum of law, however, this factual dispute is immaterial to the grounds upon which the defendants seek summary judgment.

24. Kelly claims that, after she was arrested and handcuffed, the officers lifted her off the ground to her feet, causing her shirt to be pushed or pulled up, exposing her breasts.

Complaint, ¶¶ 18-19.

25. Someone, whose identity was unknown to Kelly, pulled her shirt down to cover her breasts. **Exhibit B**, pp. 36-37.

26. Kelly does not allege that any of the defendants struck her during the course of her arrest. **Exhibit B**.

27. While Kelly was being arrested, Officer Somers was involved in a physical altercation with Stoddard in the same room. **Exhibit A**, pp. 52-54; **Exhibit C**, pp. 23-25, 45.

28. Kelly resisted the officers' efforts to restrain her and to place her under arrest.²

29. Kelly was charged by the Rockland Police Department with trespassing; assault and battery with a dangerous weapon; assault and battery upon a police officer; and resisting arrest. **Exhibit B**, pp. 45-46.

30. On January 28, 2003, after a trial, Kelly was convicted of trespassing and resisting arrest. **Exhibit B**, pp. 45-46.

31. Kelly's complaint does not assert any facts regarding any deficiency in the training provided to members of the Rockland Police Department with respect to the use of force against citizens.

² The Rockland officers claim that Kelly was kicking her feet and clutching her arms in front of her to avoid being handcuffed. Kelly was convicted in Hingham District Court of resisting arrest. As discussed in the Memorandum of Law in support of their Motion for Summary Judgment, the defendants maintain that, because of her conviction, Kelly is collaterally estopped from denying that she resisted arrest.

Respectfully submitted,

The Defendants
By their attorneys,

PIERCE, DAVIS & PERRITANO, LLP

/s/ Jeffrey M. Sankey
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Certificate of Service

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/s/ Jeffrey M. Sankey
Jeffrey M. Sankey

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 C.A. NO: 03-10461-DPW
4

5 * * * * *

6 GEORGE STODDARD, *
7 Plaintiff *

8 vs. *

9 RICHARD SOMERS, in his personal *
10 and official capacity, and THE *
11 TOWN OF ROCKLAND, MASSACHUSETTS, *
12 Defendants *

13 * * * * *

14
15 DEPOSITION OF GEORGE STODDARD
16 PIERCE, DAVIS & PERRITANO, LLP
17 Ten Winthrop Square
18 Boston, Massachusetts
19 May 28, 2004 10:50 a.m.
20

21
22
23 Maryellen Coughlin
24 Registered Professional Reporter

GEORGE STODDARD
May 28, 2004

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 Representing the Plaintiff:</p> <p>4 WHITFIELD SHARP & SHARP</p> <p>5 196 Atlantic Avenue</p> <p>6 Marblehead, Massachusetts 01945</p> <p>7 BY: Daniel S. Sharp, Esq.</p> <p>8 (781) 639-1862 (781) 639-1771</p> <p>9</p> <p>10 Representing the Defendants:</p> <p>11 PIERCE, DAVIS & PERRITANO, LLP</p> <p>12 Ten Winthrop Square</p> <p>13 Boston, Massachusetts 02110</p> <p>14 BY: Brian D. Carlson, Esq.</p> <p>15 (617) 350-0950 (617) 350-7760</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 4</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 MR. CARLSON: I will put on the</p> <p>4 record Mr. Sharp and I have agreed all</p> <p>5 objections, except as to form, will be reserved</p> <p>6 until time of trial. Mr. Stoddard may read and</p> <p>7 sign the transcript under the pains and</p> <p>8 penalties of perjury within 30 days after</p> <p>9 receiving it, and we'll waive the requirement of</p> <p>10 signing it in front of a notary.</p> <p>11</p> <p>12 GEORGE STODDARD,</p> <p>13 having been first duly sworn, was examined</p> <p>14 and testified as follows:</p> <p>15</p> <p>16 EXAMINATION</p> <p>17 BY MR. CARLSON:</p> <p>18 Q. Mr. Stoddard, I'm Brian Carlson</p> <p>19 representing the Town of Rockland and Richard</p> <p>20 Somers, as you know. Have you been deposed</p> <p>21 before?</p> <p>22 A. Who?</p> <p>23 Q. Have you been deposed before? Have</p> <p>24 you ever had a deposition taken?</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 WITNESS: GEORGE STODDARD</p> <p>4</p> <p>5 EXAMINATION: Page</p> <p>6 MR. CARLSON 4</p> <p>7 MR. SHARP 86</p> <p>8</p> <p>9</p> <p>10</p> <p>11 EXHIBITS FOR IDENTIFICATION:</p> <p>12 No. Description Page</p> <p>13 1. Statement of Mr. Stoddard 75</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 5</p> <p>1 A. Yeah. I don't think for this,</p> <p>2 though.</p> <p>3 Q. Okay. In what type of case did you</p> <p>4 give a deposition previously?</p> <p>5 A. A suit that I had pending.</p> <p>6 Q. What kind of lawsuit?</p> <p>7 A. Yes.</p> <p>8 Q. What kind of lawsuit?</p> <p>9 A. Oh, it has to do with -- what kind</p> <p>10 of lawsuit. I don't know.</p> <p>11 MR. SHARP: Well, it's a property</p> <p>12 dispute with Louis Rubbo, R-U-B-B-O.</p> <p>13 THE WITNESS: But it goes deeper</p> <p>14 than that.</p> <p>15 Q. Well, I'm sure that Mr. Sharp has</p> <p>16 explained the process to you, but I just want to</p> <p>17 go through a few reminders because this is a</p> <p>18 little bit different process than we usually</p> <p>19 appear in. If you would just give me a chance to</p> <p>20 finish my questions before you begin answering so</p> <p>21 the court reporter can take everything down, that</p> <p>22 would be helpful. If I ask a yes/no question,</p> <p>23 please be sure to say "yes" or "no" and not nod</p> <p>24 or say "mm-hmm" or something like that.</p>

2 (Pages 2 to 5)

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1 If you don't understand a question,
2 just let me know and I will try to rephrase it.
3 If you need to change or clarify an answer at any
4 point, just let me know and you can do that. You
5 will have a chance, as I just said, to review the
6 transcript afterwards and make any necessary
7 corrections to it.
8 If your counsel makes any
9 objections to a question that I raise, you can go
10 ahead and answer, unless he specifically tells
11 you not to answer, that will just give us the
12 chance to discuss it later on if we need to.
13 And finally, if you need to take a
14 break at any point, just let me know. I just ask
15 if I've asked a question you answer it before you
16 take a break.
17 A. Mm-hmm.
18 Q. So with that, let me just ask you
19 if you can give your address?
20 A. 51 Wilson Street, Rockland,
21 Massachusetts 02370.
22 Q. And how long have you lived there?
23 A. Oh, I've been there since '96 or
24 '97. Somewhere around there I moved into the

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1 house.
2 Q. Where were you living before then?
3 A. Hanover, Hanson.
4 Q. Can you summarize your education
5 for me?
6 A. Just to the 12th grade, didn't
7 graduate.
8 Q. Did you go through any votech
9 courses?
10 A. Southshore Vocational Technical
11 High School in Hanover.
12 Q. What kind of field?
13 A. Carpentry.
14 Q. And did you get a certificate from
15 there?
16 A. No.
17 Q. What years did you attend that?
18 A. Well, let's see, I was suppose to
19 graduate in '74.
20 Q. Okay. And maybe I could just ask,
21 what is your date of birth?
22 A. 4/22/55.
23 Q. Are you currently employed?
24 A. No.

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1 Q. When were you last employed?
2 A. Other than a day here and there,
3 May of 2003.
4 Q. Were you employed as a carpenter?
5 A. Yes.
6 Q. Who was your employer?
7 A. M.F. Reynolds.
8 Q. And where is that located?
9 A. Medford. It was high-end
10 construction.
11 Q. Now, you said you purchased your
12 current home in 1996 or 1997?
13 A. The papers were signed over in '99.
14 I was living in there a couple years before.
15 Q. Did you purchase it from a family
16 member?
17 A. Yes.
18 Q. I see. Now, when you first moved
19 in 1996 or 1997, did Louis Rubbo live next door
20 at that time?
21 A. Yes, he did.
22 Q. Do you know when he moved into that
23 house?
24 A. 1982 he purchased it. No, wait a

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1 minute. I think it was '82 he purchased his
2 house.
3 Q. Okay. Now, as you know, this
4 lawsuit comes in large part from a dispute you
5 had with Mr. Rubbo over the boundaries of your
6 respective properties. I'm just wondering, when
7 did you first become aware that there was an
8 issue or a dispute as to where the property line
9 was?
10 A. Years back I remember my
11 grandmother saying that Louis Rubbo had taken
12 part of Elmer Gilfeather's land, and I didn't
13 give it much thought. I was younger then.
14 And I was in the house for a while,
15 and I would say hi to Lou Rubbo, and he would
16 stick his nose up, drive his bike back and forth
17 and not even acknowledge me. So this went on for
18 let's say a couple of years.
19 So finally I saw him in the gas
20 station, and I walked up to him and said, "Do you
21 have a problem with me? You know, I say hi to
22 you, and you stick your nose up at me. You don't
23 like me or what, what's the problem?" And he
24 says, "Yeah, I have a problem with that. Your

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<p style="text-align: right;">Page 10</p> <p>1 house is on my property." He says, "I'll give 2 you a few dollars so that my lawyers don't tear 3 you apart and you'll have something in your 4 pocket, 'cause I know you don't have anything." 5 And I said, "Geez, I don't know." He says, 6 "Well, tell me what you want for it?" He said, 7 "Your grandmother said she wanted 50,000 but 8 that's way too much." So I said, "I don't know," 9 I says, "I will have to think about it and get 10 back to you, but as far as it being yours, I'm 11 going to have to look into it." 12 Q. Did he say whether he thought that 13 all of your house was on his property? 14 A. Oh, yes -- 15 Q. All of it was? 16 A. -- my house was on his property. 17 MR. SHARP: He said? 18 THE WITNESS: Yes, quote. 19 Q. Had your grandmother or any other 20 relative ever told you that Rubbo had made a 21 similar claim to them? 22 A. No. No, I don't know what happened 23 between him and Gilfeather. I can't even imagine 24 the torment that Gilfeather went through, and he</p>	<p style="text-align: right;">Page 12</p> <p>1 didn't want it. I didn't even want it because I 2 knew there was such a mess. 3 Q. Is your grandmother still living? 4 A. Yes, she's in a nursing home in 5 Rockland. 6 Q. I see. When did she move out of 7 the house? 8 A. She didn't have any choice. I 9 think she was picked up and carried out. 10 Q. When was that, if you remember? 11 A. Oh, I'd say within the last year, 12 year and a half. 13 Q. Now, when you moved in in 1996 or 14 1997, did Mr. Rubbo have the garage that's at 15 issue here? 16 A. Oh, yes. 17 Q. It had been built? 18 A. Yes. 19 Q. Do you know when it was built? 20 A. 1984. Wait a minute, wait a 21 minute. No, no, correction. 1987. 22 Q. And your grandparents told you 23 that? 24 A. No.</p>
<p style="text-align: right;">Page 11</p> <p>1 was 70, 80 years old. I can't even imagine. 2 With what I'm going through now, I can't even 3 imagine what he was going through. 4 Q. Gilfeather is the person who owned 5 the house -- 6 A. Yes. 7 Q. -- before your family built it or 8 moved into it? 9 A. It was handed down. 10 Q. I see. 11 A. My grandfather was best friends 12 with him, and it was given to my grandfather and 13 grandmother. And when my grandfather died, my 14 grandmother and I had it, and then she sold it to 15 me for a dollar. 16 Q. I see. So for a time you lived 17 with both your grandparents in the house? 18 A. Not at that house, no. I was at 19 their house. I was living in the basement at 20 their house for two years. 21 Q. Okay. 22 A. And my sister wanted to get me out 23 'cause she wanted to take over my grandmother's 24 house, so they passed this house off to me. I</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. How did you learn that? 2 A. I researched. 3 Q. You researched? 4 A. Researched that, years and years of 5 research. Let's say two, three years. It's 6 ongoing. 7 Q. Now, what did you do after you had 8 that conversation with Mr. Rubbo where he said 9 that your house was on his property? 10 A. Well, we started -- my friend, 11 which is my roommate now, and I started doing 12 research. 13 Q. This is Ms. Kelly you're referring 14 to? 15 A. Yes, Ms. Deborah Kelly. And we 16 would go to the registry of deeds and this and 17 that and get all the papers, and we found out 18 there was a big mess there. We found out that a 19 lot of the pieces of land on the street had been 20 in land court, and then we found out that this 21 one had been in superior court for the other 22 side. 23 Q. Can you clarify that for me a bit? 24 A. Well, the garage that was here was</p>

4 (Pages 10 to 13)

CATUOGNO COURT REPORTING SERVICES

Springfield, MA Worcester, MA Boston, MA Providence, RI Manchester, NH

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1 originally on the other side of the house.
2 Q. So the garage had been moved?
3 A. Right.
4 Q. And that was in 1987 it was moved?
5 A. It was moved in 1987, yeah. I'm
6 not sure of the dates on the court. The courts
7 ordered him to move it.
8 Q. And what did you conclude from the
9 research you did?
10 A. You mean that I know now?
11 Q. Right, what did you conclude after
12 you did research as to where the property line
13 was?
14 A. It's hard to explain in one little
15 piece, but what I concluded was that there's two
16 lots of land beside me which the papers say I
17 own. The town has it. They took it away for
18 nonpayment of taxes. My house is on the land
19 that Rubbo has title to that says he owns, and
20 his house is on a lot that just got lost in the
21 paperwork and on another lot that was taken over
22 by somebody else. Do you see what I'm saying?
23 Q. So it seems kind of confusing, but
24 the documentation seems inconsistent?

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1 A. Right, and to anybody that doesn't
2 know -- I know more about that street than
3 anybody on that. Anybody that doesn't know they
4 can get confused. And that you can ask Dan.
5 He'll confirm it.
6 Q. Okay. Have you ever --
7 MR. SHARP: Off a second.
8 MR. CARLSON: Sure.
9 (Discussion off the record.)
10 MR. CARLSON: Let me just put on
11 the record Mr. Sharp is kindly putting together a
12 sketch of the property, and I'm sure he will let
13 Mr. Stoddard take a look at it and make sure that
14 he agrees with it, and I will try my best to
15 understand it.
16 THE WITNESS: It boils down to
17 three things anyway.
18 MR. SHARP: Hold on a second.
19 THE WITNESS: All right.
20 MR. SHARP: I think if you just
21 tell Mr. Carlson who owns which lot --
22 THE WITNESS: Are you going to
23 number those?
24 MR. SHARP: No, then it will get

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1 too confusing, but that's your house
2 (indicating), that's the garage (indicating),
3 that's Rubbo's house (indicating), that's the
4 swamp (indicating).
5 MR. CARLSON: Sure, if you could
6 just label that with perhaps names.
7 MR. SHARP: And who you believes
8 owns what based on your research.
9 THE WITNESS: You don't have this
10 drawn up, right, though.
11 MR. SHARP: Well, you redo it,
12 then.
13 THE WITNESS: All right, let's see.
14 It consists of six lots.
15 MR. CARLSON: Could you also draw
16 where the street is and where the driveway that's
17 at issue here is, so I can understand that the
18 best I can.
19 THE WITNESS: This is the street,
20 Wilson Street (indicating). The squiggly lines
21 just indicate -- oh, shoot, I screwed that up, so
22 I can't say that.
23 MR. CARLSON: You can correct it.
24 THE WITNESS: Okay. Now, where did

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1 you want the garage, where it was or where it is?
2 MR. SHARP: Where it is.
3 THE WITNESS: Okay, where it is.
4 You're asking me to do three years of research in
5 one piece of paper. Let me make sure I'm not
6 screwing this up. Don't pay attention to the
7 numbers, that's just for me, 'cause it will get
8 confusing.
9 Okay. This is Wilson Street
10 (indicating). Off the top of my head north or
11 south, I don't know, but I do have drawings that
12 have all of that. This is parcel 42 which I have
13 documentation that says that I own it.
14 MR. CARLSON: Okay.
15 THE WITNESS: The town took this
16 over in 1982 for nonpayment of taxes, owner
17 unknown, so they didn't do a title search. My
18 house is on parcel 43 --
19 MR. CARLSON: Okay.
20 THE WITNESS: -- which consists of
21 two lots, and these are the corrected lot
22 numbers.
23 Q. Okay. And the middle thing is the
24 garage?

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<p style="text-align: right;">Page 18</p> <p>1 A. Right.</p> <p>2 Q. Okay.</p> <p>3 A. So basically what I'm saying I own</p> <p>4 is this, right in here (indicating).</p> <p>5 Q. And Mr. Rubbo says the line is here</p> <p>6 (indicating)?</p> <p>7 A. Well, that's where the line is, but</p> <p>8 that line splits my property in half.</p> <p>9 Q. Mm-hmm.</p> <p>10 A. Not according to the paperwork,</p> <p>11 according to what I have to go into court and</p> <p>12 prove.</p> <p>13 Q. Okay.</p> <p>14 A. Because my deed says that I own</p> <p>15 this (indicating).</p> <p>16 Q. Okay.</p> <p>17 A. His deed says that he owns this</p> <p>18 (indicating).</p> <p>19 Q. Mm-hmm.</p> <p>20 A. Now, when his deed was written up,</p> <p>21 and I have a plot plan that shows it, the deed</p> <p>22 and the plot plan -- okay, the deed lists that</p> <p>23 he's on 43 and 39, which made this 43 and 39 on</p> <p>24 his plot plan, but in reality, this is 35 and 31,</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Can you estimate about how many</p> <p>2 years after you owned the house? I don't want</p> <p>3 you to guess, but if you could just give me your</p> <p>4 best estimation.</p> <p>5 A. If I give an estimation, then I</p> <p>6 would be perjuring myself. I don't know.</p> <p>7 Q. All right, all right. Do you</p> <p>8 remember the first occasion on which the police</p> <p>9 were called?</p> <p>10 A. To the best of my recollection, it</p> <p>11 was the time that they came down and took the</p> <p>12 plates off of Kelly's truck. See, right now you</p> <p>13 got me digging, digging back. I have it</p> <p>14 documented.</p> <p>15 Q. So somebody took the license plates</p> <p>16 off of Kelly's truck?</p> <p>17 A. Yeah, the Rockland Police</p> <p>18 Department took them off.</p> <p>19 Q. Do you know who called them to do</p> <p>20 that?</p> <p>21 A. To take the plates off, no. But</p> <p>22 who called them, it wasn't myself.</p> <p>23 Q. Okay. What happened when the</p> <p>24 police came to take the plates off?</p>
<p style="text-align: right;">Page 19</p> <p>1 not 43 and 39. And if this was 43 and 39, then</p> <p>2 my house would be on 51 and 47.</p> <p>3 Q. Mm-hmm.</p> <p>4 A. So on goes the dispute where he put</p> <p>5 his garage.</p> <p>6 Q. Okay. We'll get back to this.</p> <p>7 A. It goes into more than that. It</p> <p>8 goes into I have no where to park.</p> <p>9 Q. Okay. Why don't I get back to this</p> <p>10 in just a second.</p> <p>11 A. All right.</p> <p>12 Q. A few more questions, then I'll</p> <p>13 probably ask you to refer to that again.</p> <p>14 A. If it's all right with the lawyer,</p> <p>15 if you have any requests I can give you whatever</p> <p>16 you need on paperwork as far as that goes.</p> <p>17 MR. CARLSON: Okay. Well, I'll</p> <p>18 look into that.</p> <p>19 Now, when was the first time that</p> <p>20 police were ever called to intervene in a dispute</p> <p>21 that you were having with Mr. Rubbo over this</p> <p>22 issue?</p> <p>23 A. I have no idea. The first time, I</p> <p>24 have no idea.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. I'm trying to think, 'cause there</p> <p>2 was a time that I got stuck in the ribs. Off the</p> <p>3 top of my head, I can't remember. It was so long</p> <p>4 ago, and there's been so much going on.</p> <p>5 Q. When is the first time you can</p> <p>6 remember that the police were called because you</p> <p>7 and Mr. Rubbo were having an argument?</p> <p>8 A. I remember one time that Officer</p> <p>9 Doranzo came over, and I forget what the dispute</p> <p>10 was between Louis Rubbo and I. It had do with</p> <p>11 parking the car, I guess, beside the house, and</p> <p>12 he wanted the car off of his property.</p> <p>13 Q. So you were having an argument with</p> <p>14 him outside of your houses?</p> <p>15 A. Yeah. Well, he would damage the</p> <p>16 car and do whatever he wanted to do.</p> <p>17 Q. Did you call the police at that</p> <p>18 time?</p> <p>19 A. If I had called the police in all</p> <p>20 the times that things have been going, it might</p> <p>21 be three, four, five times.</p> <p>22 Q. You've called the police three or</p> <p>23 four times?</p> <p>24 A. Well, I myself probably two or</p>

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1 three, and Deborah Kelly a couple times.
 2 Q. How many other times have they come
 3 besides when you called them?
 4 A. Louis Rubbo, he probably called
 5 them maybe 30 times.
 6 Q. So you're thinking that maybe
 7 around 35 times total the police have come to
 8 deal with this situation?
 9 A. I would say that would be a close
 10 assumption.
 11 Q. Okay.
 12 A. It's nothing you can hold me to,
 13 but I would say it would be close.
 14 Q. Now, obviously we're going to be
 15 talking a lot about the incident on April 21st,
 16 2002, today. I want to ask you, in all the times
 17 prior to that when the police came, was there
 18 ever a time when a police officer conducted
 19 himself or herself in a manner that you thought
 20 was inappropriate, threatening, violent, or
 21 anything like that?
 22 A. I can say yes. My life may be at
 23 risk, then. I don't know.
 24 Q. Can you describe what you mean?

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1 A. I was told -- first, I was jammed
 2 in the ribs, and I was told "You're an
 3 instigator, park your fucking vehicle over
 4 there."
 5 Q. Do you remember when that was?
 6 A. That was probably one of the first
 7 times that the police came over.
 8 Q. Do you know which police officer it
 9 was who --
 10 A. I don't know his name, but I know
 11 him, yes.
 12 Q. Was it one of the officers who came
 13 on April 21st, 2002?
 14 A. It was one of the officers that
 15 took the plate off of Kelly's truck, but I never
 16 called the police to report that.
 17 Q. What I'm asking is, the officer who
 18 elbowed you in the ribs, was that one of the
 19 officers who came on April 21st, 2002, to deal
 20 with the argument?
 21 A. No, no. He works night shift.
 22 Q. Okay. Now, other than the time
 23 that you just talked about when an officer
 24 elbowed you and swore at you, was there any other

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1 time where you had a problem with the way that an
 2 officer behaved when intervening in this dispute?
 3 A. Other than the day?
 4 Q. Other than that day.
 5 A. No. Not that I can recall. I
 6 would say no.
 7 Q. Okay. Now, moving to April 21st,
 8 2002, that incident --
 9 A. It was the day before my birthday,
 10 by the way.
 11 Q. How was it that Ms. Kelly's car
 12 came to be parked in the driveway that's in
 13 dispute that day?
 14 A. Where she normally parks Mr. Rubbo
 15 had blocked.
 16 Q. Can you show me that on this
 17 diagram?
 18 A. All right. We were parking the
 19 cars right here (indicating).
 20 Q. So you would park your --
 21 A. And he blocked here. Now, what
 22 goes on is this is -- well, see, it's not really
 23 part of the lot. It's really out here. This is
 24 town owned because the town owns 40 feet.

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1 Q. Forty feet of the street?
 2 A. Yeah.
 3 Q. Okay. All right, if I can just try
 4 to make this a little clear for the record. Tell
 5 me if I'm being accurate here. It looks like
 6 what you're saying is that Kelly would usually
 7 park her car in a driveway right adjacent to your
 8 house, but that this time Mr. Rubbo had parked
 9 his car horizontally on the edge of the driveway
 10 partially in front of your house --
 11 A. Right.
 12 Q. -- and blocking her?
 13 A. She would park right here
 14 (indicating), because we had the Volvo here
 15 (indicating), and she would park right here
 16 (indicating).
 17 Q. So you would park your cars in
 18 tandem usually?
 19 A. Yeah. We had nowhere else to park
 20 them, except maybe further down the street.
 21 Q. And what is next to where you park
 22 your cars, is that another part of the driveway?
 23 A. What is next to -- well, let's say
 24 his driveway comes through like this

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<p style="text-align: right;">Page 26</p> <p>1 (indicating).</p> <p>2 Q. Okay. So his driveway takes up the</p> <p>3 whole space from his house out to the street,</p> <p>4 essentially?</p> <p>5 A. Pretty much. It takes up the whole</p> <p>6 lot which is 4,000 square feet.</p> <p>7 Q. Okay. And it's narrow enough, I</p> <p>8 take it, then, that when he put his car out on</p> <p>9 the street there was no room to, like, pull</p> <p>10 forward and back around, so it really was</p> <p>11 blocked?</p> <p>12 A. No, because he had ties and stuff</p> <p>13 here (indicating). He had a car here</p> <p>14 (indicating).</p> <p>15 Q. So he also had stuff in the</p> <p>16 driveway, okay.</p> <p>17 A. We had trees here which one time --</p> <p>18 that was probably one of the first episodes, now</p> <p>19 that you mention it -- when Kelly was parked</p> <p>20 there -- as a matter of fact, we have a picture</p> <p>21 of it -- and Louis Rubbo drove over the hump and</p> <p>22 parked his truck right smack dab right up beside.</p> <p>23 Now, that time we had to call the police. The</p> <p>24 police came down, Rubbo couldn't move his truck</p>	<p style="text-align: right;">Page 28</p> <p>1 April 21st, 2002, incident.</p> <p>2 A. Oh, well, she had nowhere to park,</p> <p>3 so she parked it in the driveway.</p> <p>4 Q. She parked in his portion of the</p> <p>5 driveway?</p> <p>6 A. No. In his alleged driveway, yes.</p> <p>7 Q. Okay.</p> <p>8 A. She had nowhere else to park.</p> <p>9 Q. Okay. And then what happened after</p> <p>10 that?</p> <p>11 A. It sat there -- well, let me see.</p> <p>12 Q. I'm sorry, if I can just clarify</p> <p>13 too. Was that on April 21st, that Sunday, or was</p> <p>14 it actually the day before?</p> <p>15 A. No, it was probably two or three</p> <p>16 days before that.</p> <p>17 Q. Okay.</p> <p>18 A. And the cops were called, I don't</p> <p>19 remember by who, and they came down, and they</p> <p>20 said there was nothing they could do.</p> <p>21 Q. Did you speak to them when they</p> <p>22 came?</p> <p>23 A. Do you know how hard this stuff is</p> <p>24 to remember, especially with all the stuff going</p>
<p style="text-align: right;">Page 27</p> <p>1 spinning the tires, spinning the tires. And this</p> <p>2 was Officer Doranzo that had come down that time.</p> <p>3 I don't know if a police report was filed. I'm</p> <p>4 sure there was. And basically what ended up</p> <p>5 happening was the officer made Deborah Kelly move</p> <p>6 her truck which meant that she had to run over a</p> <p>7 tree that we had on the front lawn.</p> <p>8 Q. Is it legal to park in the street</p> <p>9 outside of either of these houses?</p> <p>10 A. When it is not snowing.</p> <p>11 Q. Is it typically crowded when it is</p> <p>12 not snowing? Is it difficult to find a space to</p> <p>13 park on the street?</p> <p>14 A. No. But the point on that is he</p> <p>15 has this whole driveway. He also has in front of</p> <p>16 his house if he wants to park --</p> <p>17 Q. Okay.</p> <p>18 A. -- but he chooses to aggravate me.</p> <p>19 Q. Now, what happened after you found</p> <p>20 that Kelly's car had been blocked in by Rubbo's</p> <p>21 truck?</p> <p>22 A. Well, I would say a couple times --</p> <p>23 MR. SHARP: On which occasion?</p> <p>24 MR. CARLSON: I'm returning to the</p>	<p style="text-align: right;">Page 29</p> <p>1 on?</p> <p>2 Q. Do you think that either you or</p> <p>3 Kelly spoke to them?</p> <p>4 A. At different times, yeah, because</p> <p>5 when they would talk to him they would come over.</p> <p>6 They would get a complaint from him, and then</p> <p>7 we'd have to tell them why.</p> <p>8 Q. But on this occasion that we are</p> <p>9 talking about here when she put her car in the</p> <p>10 driveway 'cause there wasn't any other space, do</p> <p>11 you remember whether you or Kelly or both of you</p> <p>12 talked to the police when they came?</p> <p>13 A. Oh, a couple of times.</p> <p>14 Q. But this time specifically. The</p> <p>15 first time they came after she had put her car or</p> <p>16 put her truck in Rubbo's alleged driveway.</p> <p>17 A. The first couple days, yes, and</p> <p>18 they said there's nothing we can do, so she left</p> <p>19 the vehicle there.</p> <p>20 Q. Who did they say that to, to you?</p> <p>21 A. No, Rubbo wanted it towed out, and</p> <p>22 I said, "We'll move the vehicle when you move</p> <p>23 your truck and she can park there," because she</p> <p>24 has no where else to park.</p>

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<p style="text-align: right;">Page 30</p> <p>1 Q. And were the police there when you</p> <p>2 had that conversation with Rubbo?</p> <p>3 A. No, this was a couple times I had</p> <p>4 said that to him.</p> <p>5 Q. Okay.</p> <p>6 A. So I guess that morning I got up</p> <p>7 and all four tires were flat.</p> <p>8 Q. So this is the morning of April</p> <p>9 21st?</p> <p>10 A. Yes. So I got my compressor, and I</p> <p>11 went over to fill up the tires, and all the valve</p> <p>12 stems had been pulled out and bent. So I went</p> <p>13 down to the hardware store, got some valve stems,</p> <p>14 put them in and was out there pumping up the</p> <p>15 tires, and Rubbo comes out and starts harassing</p> <p>16 me, "Get that fucking truck..." So I just</p> <p>17 pumped up the tires, and I went somewhere, I</p> <p>18 think it was to the coffee shop, and I came back</p> <p>19 and all the tires, three of the tires were flat</p> <p>20 again.</p> <p>21 Q. How long was that after you had</p> <p>22 pumped them up?</p> <p>23 A. Oh, maybe two hours.</p> <p>24 Q. And then what happened after you</p>	<p style="text-align: right;">Page 32</p> <p>1 day I have to put up with something, so it's hard</p> <p>2 to remember everything. It's especially hard --</p> <p>3 and I'm not good with dates or numbers. It's</p> <p>4 especially hard to put a date or a time. Now,</p> <p>5 the only reason why the 21st sticks out in my</p> <p>6 head is because that was the day before my</p> <p>7 birthday, and it was a wonderful birthday</p> <p>8 present.</p> <p>9 Q. Okay. So you came back, and you</p> <p>10 saw the tires were flat again, you think you may</p> <p>11 have spoken to Mr. Rubbo again briefly, what do</p> <p>12 you remember doing after that?</p> <p>13 A. I was working on the yard.</p> <p>14 Q. And what happened while you were</p> <p>15 working in the yard?</p> <p>16 A. And Kelly was working out in the</p> <p>17 backyard cutting trees with the chain saw and</p> <p>18 what not.</p> <p>19 Q. And then what happened?</p> <p>20 A. And then Rubbo had said something</p> <p>21 about towing it. I said, "Fine," and the tow</p> <p>22 truck came.</p> <p>23 Q. About what time of day was this the</p> <p>24 tow truck came?</p>
<p style="text-align: right;">Page 31</p> <p>1 came back and saw that the tires were flat again?</p> <p>2 A. There might have been words between</p> <p>3 the two neighbors.</p> <p>4 Q. I'm sorry, say that again, please.</p> <p>5 A. I said there might have been words</p> <p>6 between the two neighbors.</p> <p>7 Q. Between you and Rubbo, you mean?</p> <p>8 A. Yeah, like "Move your F'ing truck</p> <p>9 off my property."</p> <p>10 "I told you I'm going to move it</p> <p>11 when you move that."</p> <p>12 Q. Do you remember anything else that</p> <p>13 you said to him or he said to you either when you</p> <p>14 first noticed that the tires were flat or when</p> <p>15 you saw that they were flat again?</p> <p>16 A. You mean did I flip out and want to</p> <p>17 beat him up, no.</p> <p>18 Q. But do you remember anything else</p> <p>19 that was said? If you don't, I understand.</p> <p>20 A. No, I don't.</p> <p>21 Q. Okay.</p> <p>22 A. I mean, this has been so ongoing</p> <p>23 and every day -- I'm telling you, it's not one</p> <p>24 day this week, one day next week. Every single</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Somewhere around one o'clock, I</p> <p>2 think, 1, 1:30. I didn't have a watch, so I</p> <p>3 don't know.</p> <p>4 Q. Okay. Did you try to or think</p> <p>5 about pumping the tires up again after you came</p> <p>6 back the second time?</p> <p>7 A. No, because I already did it once.</p> <p>8 I'm not going to do it again.</p> <p>9 Q. Okay. Were you thinking that it</p> <p>10 was going to be Rubbo's responsibility to take</p> <p>11 care of the tires 'cause you believed he'd done</p> <p>12 it?</p> <p>13 A. Yeah.</p> <p>14 Q. And so what happened after the tow</p> <p>15 truck came?</p> <p>16 A. I told the tow truck you can't</p> <p>17 touch that vehicle. You move it, you're going to</p> <p>18 be responsible, and we hemmed and hawed, and the</p> <p>19 tow truck was ready to leave because, you know,</p> <p>20 he doesn't want to get into this.</p> <p>21 Q. About how long was it before he</p> <p>22 said he was ready to leave?</p> <p>23 A. How long was it before he said he</p> <p>24 was ready to leave. I would say within a half</p>

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<p style="text-align: right;">Page 34</p> <p>1 hour --</p> <p>2 Q. Okay.</p> <p>3 A. -- that we were having discussion.</p> <p>4 Q. Did you know the tow truck driver?</p> <p>5 A. No. I don't know if Louie did,</p> <p>6 though, but the tow truck driver was going to</p> <p>7 leave.</p> <p>8 Q. Have you learned the name of the</p> <p>9 tow truck driver since that day?</p> <p>10 A. No. I'm sure it's on a report</p> <p>11 somewhere. To me it doesn't matter.</p> <p>12 Q. So what happened after the tow</p> <p>13 truck driver said he was going to leave?</p> <p>14 A. Louie got on his phone.</p> <p>15 Q. Did you see him take his phone out?</p> <p>16 A. No.</p> <p>17 Q. Did he go into his house?</p> <p>18 A. I saw him just standing there</p> <p>19 talking.</p> <p>20 Q. So he pulled his cell phone out?</p> <p>21 A. Mm-hmm.</p> <p>22 Q. Okay.</p> <p>23 A. I assume he pulled it out. I saw</p> <p>24 him standing there talking on it.</p>	<p style="text-align: right;">Page 36</p> <p>1 mean, the area is so close.</p> <p>2 Q. Mm-hmm.</p> <p>3 A. And I went out and talked to Kelly,</p> <p>4 and I said, "Geez, Kelly, the cops are here."</p> <p>5 Q. She was in the backyard at the</p> <p>6 time?</p> <p>7 A. Yeah, cutting trees, not knowing</p> <p>8 what's going on.</p> <p>9 Q. And then what happened after the</p> <p>10 police came?</p> <p>11 A. Well, when the police were there,</p> <p>12 they would talk to Rubbo, and then I went over</p> <p>13 there, and there were, you know, words exchanged.</p> <p>14 Q. Did you hear what they said to</p> <p>15 Rubbo or what he said to them?</p> <p>16 A. No, but they wanted the truck off</p> <p>17 his property. He says it's his property. I said</p> <p>18 it's in dispute. I said I have paperwork that</p> <p>19 shows that I own it, blah-blah-blah and so on and</p> <p>20 so on, and I said let me run in and get it.</p> <p>21 Q. Let me just back up for a second.</p> <p>22 Did you know any of the officers who showed up at</p> <p>23 first?</p> <p>24 A. No, no.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. And after he apparently</p> <p>2 called the police, two cruisers showed up, is</p> <p>3 that right?</p> <p>4 A. It was two or three.</p> <p>5 Q. Okay. About how long after you --</p> <p>6 A. Now, see, I don't know he called</p> <p>7 the police. The only reason I know he called the</p> <p>8 police is 'cause they came.</p> <p>9 Q. Right, you're assuming that, and I</p> <p>10 understand that. About how long after you saw</p> <p>11 him on his telephone did the police come?</p> <p>12 A. Geez, I don't know. These are</p> <p>13 tough questions.</p> <p>14 Q. Just your best guess.</p> <p>15 A. Fifteen, twenty minutes.</p> <p>16 Q. And you said you think that two or</p> <p>17 three cruisers came?</p> <p>18 A. Well, I initially -- I heard</p> <p>19 sirens, and I heard squealing tires, and I looked</p> <p>20 up, and I see two cruisers come flying down the</p> <p>21 street.</p> <p>22 Q. Had you gone back to your yard and</p> <p>23 resumed your work?</p> <p>24 A. Well, I was in the front yard. I</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Since you probably have learned the</p> <p>2 names of them since then, do you remember now</p> <p>3 which officer you were talking to, to whom you</p> <p>4 said I have paperwork that shows that I own the</p> <p>5 property?</p> <p>6 A. Yeah, it was Officer Donnelly.</p> <p>7 Q. It was Officer Donnelly?</p> <p>8 A. Mm-hmm.</p> <p>9 Q. And what did Officer Donnelly say</p> <p>10 to you when you said that?</p> <p>11 A. He looks at it, and then he says,</p> <p>12 "Well, we have nothing to do with that, that's a</p> <p>13 civil matter." I said, "Fine." I said,</p> <p>14 "Where's, you know --</p> <p>15 Q. And what was the other officer</p> <p>16 doing when you were talking to Mr. Donnelly or</p> <p>17 Officer Donnelly about that?</p> <p>18 A. Officer Byers.</p> <p>19 Q. And what was he doing at the time,</p> <p>20 if you noticed?</p> <p>21 A. We were all kind of in a</p> <p>22 argument --</p> <p>23 Q. So the two officers --</p> <p>24 A. -- myself, and I assume the two</p>

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<p style="text-align: right;">Page 38</p> <p>1 officers and the tow truck driver.</p> <p>2 Q. So you were all basically together</p> <p>3 talking about this?</p> <p>4 A. Yeah.</p> <p>5 Q. Was Rubbo in on that conversation?</p> <p>6 A. He's standing off to the side, but</p> <p>7 initially he was.</p> <p>8 Q. Do you remember what he said?</p> <p>9 A. No, other than "I want this F'ing</p> <p>10 truck off my property."</p> <p>11 Q. Do you remember anything else that</p> <p>12 Officer Donnelly said right at that time?</p> <p>13 A. Not at that time, no.</p> <p>14 Q. Do you remember anything that</p> <p>15 Officer Byers said?</p> <p>16 A. Not at that time, no.</p> <p>17 Q. So what happened next after Officer</p> <p>18 Donnelly said he didn't want to look at your</p> <p>19 papers and it was a civil matter.</p> <p>20 A. Then I went out back and got Kelly.</p> <p>21 I said, "Kelly, the cops are here," and I said,</p> <p>22 "They're trying to tow your truck." So she came</p> <p>23 over and had a few words with Byers, I guess</p> <p>24 that's his name.</p>	<p style="text-align: right;">Page 40</p> <p>1 gave you four minutes." I said, "It's up to</p> <p>2 you." I said, "The tires" -- well, I did tell</p> <p>3 them that we were not going to move the truck</p> <p>4 unless the tires were pumped up by Rubbo and he</p> <p>5 moved his vehicle so she had a place to park.</p> <p>6 Q. Okay. And what happened after you</p> <p>7 told the police that?</p> <p>8 A. They were going to tow it, and I</p> <p>9 said to Kelly, "Well, it's up to you whether you</p> <p>10 move it or not."</p> <p>11 Q. And then what happened?</p> <p>12 A. And at this time Rubbo peeled off</p> <p>13 and moved his truck down.</p> <p>14 Q. He pulled it on to the street?</p> <p>15 A. I assume. I didn't see everything</p> <p>16 that was going on behind me.</p> <p>17 Q. So just at some point you noticed</p> <p>18 that Rubbo had moved his truck on to the street?</p> <p>19 A. Right.</p> <p>20 Q. And what was the tow truck doing at</p> <p>21 this time?</p> <p>22 A. From the sound of it, it was</p> <p>23 backing up.</p> <p>24 Q. Did you think that he was getting</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. And do you remember what she said</p> <p>2 to him?</p> <p>3 A. She said something to the fact that</p> <p>4 she didn't have to move her truck and that it was</p> <p>5 a civil matter and what not and I don't know.</p> <p>6 Q. Do you remember what he said in</p> <p>7 response, if anything?</p> <p>8 A. He had said that he wanted the</p> <p>9 truck moved, and there was mention of a certain</p> <p>10 time limit to move it.</p> <p>11 Q. And what time limit did he say?</p> <p>12 A. He said three or four minutes to</p> <p>13 make up your decision. "If you don't move it,</p> <p>14 we're going to tow it."</p> <p>15 Q. And what happened after that?</p> <p>16 A. Well, we decided it wasn't going to</p> <p>17 be, she wasn't going to move it, and then they, I</p> <p>18 guess -- I didn't see all that was going on</p> <p>19 because I wasn't watching behind me.</p> <p>20 Q. Did you tell the officers we're not</p> <p>21 going to move it?</p> <p>22 A. Yeah.</p> <p>23 Q. And then what happened?</p> <p>24 A. And then I said to Kelly, "They</p>	<p style="text-align: right;">Page 41</p> <p>1 ready to hook up Kelly's truck and tow it?</p> <p>2 A. I would assume, yeah, because I</p> <p>3 could hear it beeping.</p> <p>4 Q. Okay. And what happened after</p> <p>5 that?</p> <p>6 A. To the best I remember, Kelly</p> <p>7 decided she was going to move her truck. The</p> <p>8 officer gave her the last chance, so she went</p> <p>9 over to her truck to get in, and one of the</p> <p>10 officers, Donnelly, said -- now, this is from</p> <p>11 behind me -- "Stop, you're under arrest." She's</p> <p>12 in the vehicle, starts it up.</p> <p>13 Q. Was she in the truck yet when you</p> <p>14 heard the officer say that?</p> <p>15 A. Yeah, yeah. And then automatically</p> <p>16 when you start it up, the radio comes on.</p> <p>17 Q. Was the door open to the truck when</p> <p>18 the officer said that?</p> <p>19 A. No. She was up and in it, and the</p> <p>20 best I can remember is that Donnelly came running</p> <p>21 over.</p> <p>22 Q. Was that the first time any of the</p> <p>23 officers had said that she was under arrest?</p> <p>24 A. Yes, and she never even knew it.</p>

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<p style="text-align: right;">Page 42</p> <p>1 She had decided to move her truck in that 2 allotted time. 3 Q. No, prior to that. Prior to Kelly 4 getting into her truck to move it, had any of the 5 officers told you or Kelly to move off of what 6 they thought was Rubbo's driveway? 7 A. Yeah. 8 Q. When did that happen, as best you 9 can remember? 10 A. I was on the dirt, I think it was, 11 when we were having the discussion. 12 Q. The dirt is what the police 13 believed to be Rubbo's property? 14 A. Yeah. And now that I think of it, 15 it was town property, is what it was. 16 Q. Okay. 17 A. Originally I was on the driveway 18 with all of them, and then I had backed over, and 19 then I was by my car. 20 Q. Did one of the officers say that 21 you and Kelly had to move because you were 22 trespassing? 23 A. I think it was Officer Donnelly who 24 told me, "If you don't get off the property, I'm</p>	<p style="text-align: right;">Page 44</p> <p>1 A. That was mentioned, but all the 2 other times it was a civil matter. 3 Q. So on this occasion one of the 4 officers -- 5 A. From what I see -- oh, that's 6 correct, you remind me now. When Donnelly looked 7 at the papers he said, "Well, from what I see" -- 8 and I guess if you look at it you could assume 9 that -- "this is Mr. Rubbo's property, so get off 10 or I'm going to arrest you for trespassing." 11 Q. And it seemed that way to him 12 because you were standing in front of Rubbo's 13 garage? 14 A. Yeah. 15 MR. SHARP: Objection. 16 A. Alleged garage. 17 Q. I understand. What happened after 18 Kelly got into her car, got into her truck and 19 closed the door? 20 A. Now, I'm standing there, and I 21 can't believe what I'm seeing. I'm kind of 22 dumbfounded by this time. From the time I was 23 told that I would be arrested for trespassing, I 24 backed off. But I remember somebody running up</p>
<p style="text-align: right;">Page 43</p> <p>1 going to arrest you." And me, I just backed 2 down. 3 Q. So then you moved on to your land 4 when he said that? 5 A. I just stepped one step over, one 6 or two steps over. 7 Q. Was Kelly next to you at that 8 point? 9 A. I don't remember. 10 Q. Do you remember if -- 11 A. I think she was leaning against the 12 Volvo which was right there (indicating), was 13 right here (indicating). 14 Q. Okay. 15 A. I think I need to go to the 16 bathroom when we get a break. 17 Q. Why don't we do it right now. 18 A. All right. 19 (A break was taken.) 20 Q. Now, when the officers told you to 21 move off of, move off of the driveway back on to 22 your own property, did they tell you why they 23 thought you were trespassing, did they tell you, 24 you know, we think this is Rubbo's land?</p>	<p style="text-align: right;">Page 45</p> <p>1 from behind me when they said you're under 2 arrest. Not to me. I was doing absolutely 3 nothing. I wasn't moving the vehicles. I was 4 just standing there like this (indicating). And 5 Kelly puts it in reverse, backs up, and because 6 the tire is flat, the tire will spin in the dirt, 7 and she pulled it over right next to the porch on 8 the front, what you would call the lawn. 9 Q. In front of your house? 10 A. Yeah. 11 Q. Okay. When you heard the policeman 12 say you're under arrest, do you remember whether 13 Kelly had started her engine at that point? 14 A. It was all in the same motion. 15 Q. So it's hard to remember exactly? 16 A. I know she didn't hear him. I know 17 she didn't hear him. 18 Q. And then what happened? 19 A. And her truck is exceptionally loud 20 when you start it up, and then the radio. 21 Q. And then what happened after she 22 backed her truck up in front of the porch? 23 A. As far as -- 24 Q. Just the next thing you remember, I</p>

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<p style="text-align: right;">Page 46</p> <p>1 guess.</p> <p>2 A. Officer Donnelly was at the truck.</p> <p>3 Q. Where was he standing?</p> <p>4 A. To the best of my knowledge, at the</p> <p>5 door.</p> <p>6 Q. The driver's side door?</p> <p>7 A. Yeah.</p> <p>8 Q. Did you hear him say anything?</p> <p>9 A. That I don't remember.</p> <p>10 Q. Did you see him doing anything?</p> <p>11 Was he pounding on the window or anything like</p> <p>12 that, the window of the truck?</p> <p>13 A. I don't even remember that either,</p> <p>14 whether he was knocking on the window or not.</p> <p>15 Q. What's the next thing you do</p> <p>16 remember after you saw him by the driver's side</p> <p>17 door?</p> <p>18 A. I remember once she was backing</p> <p>19 up -- now, keep in mind I'm standing on the</p> <p>20 middle of the lawn right now. When she was</p> <p>21 backing up I heard, "You're under arrest,"</p> <p>22 blah-blah, and then I heard, "All right, that's</p> <p>23 it," and Donnelly hit the mirror with his elbow,</p> <p>24 and then where he went from there I don't know.</p>	<p style="text-align: right;">Page 48</p> <p>1 on disputed property.</p> <p>2 Q. Okay. So she moved it into the</p> <p>3 area that Rubbo had been blocking?</p> <p>4 A. Yeah, by that.</p> <p>5 Q. By that?</p> <p>6 A. Right.</p> <p>7 Q. So to the left of it if you're</p> <p>8 looking from the street?</p> <p>9 A. If you're looking from the</p> <p>10 street -- even more than you normally would have</p> <p>11 it.</p> <p>12 Q. Okay. How far did she move it</p> <p>13 forward, about?</p> <p>14 A. Oh, let's see. The lot is 40 feet.</p> <p>15 This had to be 15, 20 feet.</p> <p>16 Q. Did you notice how long it took her</p> <p>17 to move it forward?</p> <p>18 A. No, I didn't have a watch.</p> <p>19 Q. Was she moving quickly, slowly?</p> <p>20 A. You mean did she speed?</p> <p>21 Q. Well, I'm assuming she wasn't going</p> <p>22 55 miles an hour, but I'm just wondering if she</p> <p>23 was going very slowly or normal speed for pulling</p> <p>24 in a driveway?</p>
<p style="text-align: right;">Page 47</p> <p>1 Kelly's vehicle moved in front, and I'm standing</p> <p>2 still. I'm standing let's say right here</p> <p>3 (indicating), and the truck is here (indicating),</p> <p>4 and one of the officers said, "Don't you move."</p> <p>5 I'm standing there like this (indicating),</p> <p>6 dumbfounded. I can't believe what I'm seeing.</p> <p>7 "Get out of the truck, you're under arrest." And</p> <p>8 she looks up. I'm assuming she's scared to</p> <p>9 death. So he hit the window a couple times with</p> <p>10 his hands. He couldn't do anything, and then he</p> <p>11 pulled out his baton, and he missed the window,</p> <p>12 hit the top of the ledge, and then the next I see</p> <p>13 the window shatter, and Kelly is crying her eyes</p> <p>14 out, and from that point I was in my house.</p> <p>15 Q. If I can just go back for just a</p> <p>16 second. I think you said that after she</p> <p>17 initially backed the truck up in front of the</p> <p>18 porch at some point she pulled it forward again?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. And she pulled it forward into the</p> <p>21 place that she usually parks in --</p> <p>22 A. No, no. She pulled it right on to</p> <p>23 the property so that there was no question, right</p> <p>24 in front of the house, not on town property, not</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Just moving it, normal with flat</p> <p>2 tire.</p> <p>3 Q. Okay.</p> <p>4 A. Well, one tire was pumped up and</p> <p>5 the other one, the one that does the traction was</p> <p>6 the one that was flat.</p> <p>7 Q. Okay. And so after you saw the</p> <p>8 policeman break down the window, you said you</p> <p>9 went into your house at that point?</p> <p>10 A. Yeah.</p> <p>11 Q. And what were you going into your</p> <p>12 house to do?</p> <p>13 A. Believe it or not, I was going in</p> <p>14 to call the cops.</p> <p>15 Q. And what happened next?</p> <p>16 A. And then when I got in there, I</p> <p>17 can't call the cops, that's the cops out there.</p> <p>18 So the next thing I remember is Kelly coming</p> <p>19 through the door. I turned around, and the next</p> <p>20 thing I remember was getting hit in the face and</p> <p>21 slammed to the ground over a bookcase and saying</p> <p>22 "Don't you move." I have no idea who it was that</p> <p>23 hit me.</p> <p>24 Q. Maybe we can just break this down a</p>

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<p style="text-align: right;">Page 50</p> <p>1 little more slowly. Now, you went into your 2 house, did you close the door when you went in? 3 A. Yeah. 4 Q. And about how long after you went 5 in did Kelly open the door and come in? 6 A. Oh, Geez, I'd say it was a matter 7 of -- it had to be seconds. 8 Q. Ten seconds? 9 A. Thirty, tops. 10 Q. Did she close the door when she 11 came in? 12 A. Yeah, I remember her closing the 13 door. 14 Q. Did she lock it? 15 A. And you figure you close the door 16 you're safe inside your house. 17 Q. Did she lock the door did you 18 notice? 19 A. That I don't remember. 20 Q. Now, how did the police open the 21 door? 22 A. Whether they turned the knob or 23 not, that I don't know. 24 Q. Okay.</p>	<p style="text-align: right;">Page 52</p> <p>1 inch deep maybe. 2 Q. A quarter of an inch into the wood, 3 you have a wood door? 4 A. No, it's a metal door. 5 Q. Metal door. 6 A. But metal door with wood where the 7 backset gets cut in. 8 Q. I see. So wood is on the outside 9 of it? 10 A. No, wood is on the inside, and it's 11 metal outside. 12 Q. I see, I see. So after you heard 13 the officers come inside the house, about how 14 long was it until you were hit? 15 A. It was all instantaneous. 16 Q. So within just a few seconds? 17 A. Yeah. I didn't know nothing was 18 going on. Now, what I can't get over is that 19 when I was outside watching what was going on at 20 the truck, one of the officers had put his hand 21 up and said "Don't move." What am I going to do? 22 You know, don't come towards them. So I made no 23 forward advancement on them. I walked around and 24 went in the house.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I could hear banging and pushing, 2 but I was turned the opposite direction. 3 Q. Okay. 4 A. This happened so quick. 5 Q. You may have noticed this 6 afterward, I assume you did, did they break any 7 of the hinges of the door or did they leave any 8 marks in the door itself? 9 A. No, there was a dent on the door, 10 and the door itself has got a split. It's still 11 there. It has a split where the backset sits. 12 Q. Where was the dent on the door? 13 A. Down at the bottom. 14 Q. So it may have looked like somebody 15 kicked it? 16 A. Yeah, but keep in mind my deck was, 17 my porch was under construction, so there was two 18 by sixes and a couple of pieces of plywood 19 sitting on there. 20 Q. How big was the dent? 21 A. Oh, maybe the size of a baseball. 22 Q. So about an inch? 23 A. Yeah, the edge of a baseball 24 hitting it. Maybe not even that. A quarter of</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Where were you hit exactly, on your 2 forehead, on your cheek? 3 A. Right in here (indicating). 4 Q. So near your chin? If you can just 5 describe it as best you can. 6 A. It happened so quick. I remember 7 getting hit and then slammed. 8 Q. It's just because we can't get a 9 gesture recorded. I was wondering if you could 10 just verbalize the best you can where you were 11 hit on your face? 12 A. Right on my chin. 13 Q. Right on your chin. Was it with a 14 fist? 15 A. Or an open hand. I don't remember. 16 Q. There wasn't a baton or another 17 weapon or anything? 18 A. Oh, no, no. 19 Q. Did you fall over when you were 20 hit? 21 A. No. I didn't have time to fall 22 over. I was helped over. 23 Q. So you were tackled down after you 24 were hit?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. No, I was grabbed and slammed. I</p> <p>2 don't weigh a lot. I weigh 150 pounds. This guy</p> <p>3 weighs double what I weigh.</p> <p>4 Q. So really your being punched and</p> <p>5 taken down was kind of part of the same motion?</p> <p>6 A. It was all instantaneous. And I</p> <p>7 looked up, and there's Rick Somers, "Don't you</p> <p>8 fucking move."</p> <p>9 Q. So you were taken down on to your</p> <p>10 back?</p> <p>11 A. Right. Well, I was on a bookcase</p> <p>12 first, like this, with my ankles (indicating),</p> <p>13 and I looked up, and I saw it was Rick Somers,</p> <p>14 and I said, "Rick, what did you do that for?"</p> <p>15 Q. And Rick Somers is another Rockland</p> <p>16 police officer?</p> <p>17 A. Yes.</p> <p>18 Q. And he lives on your street?</p> <p>19 A. Yes.</p> <p>20 Q. Were you acquainted with him before</p> <p>21 this?</p> <p>22 A. Oh, yes, hi and bye, and he'd go</p> <p>23 into the donut shop where I use to hang around.</p> <p>24 So as far as I knew, he was the nicest officer I</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. At this point he was still holding</p> <p>2 you against a bookcase?</p> <p>3 A. Oh, yeah.</p> <p>4 Q. How tall is this bookcase you're</p> <p>5 talking about?</p> <p>6 A. I'd say -- well, the bookcase is</p> <p>7 laying on the floor now. The bookcase is</p> <p>8 probably --</p> <p>9 Q. Four feet tall, would you say?</p> <p>10 A. Yeah, it's about that height.</p> <p>11 Q. So when he took you down he knocked</p> <p>12 you over on top of the bookcase --</p> <p>13 A. Yeah, and I was kind of --</p> <p>14 Q. -- and knocked the bookcase over</p> <p>15 too?</p> <p>16 A. -- on it with it in my back, and he</p> <p>17 was holding me (indicating).</p> <p>18 Q. Okay. So I take it the bookcase</p> <p>19 was against a wall and he kind of pushed you --</p> <p>20 A. No, no. We were moving stuff</p> <p>21 around.</p> <p>22 Q. Okay.</p> <p>23 A. We had just brought a refrigerator</p> <p>24 in there, and we were moving stuff around.</p>
<p style="text-align: right;">Page 55</p> <p>1 ever met, the nicest guy in the world.</p> <p>2 Q. Would you have called him a friend</p> <p>3 or just an acquaintance?</p> <p>4 A. An acquaintance. It was definitely</p> <p>5 somebody I didn't dislike, till now. I don't</p> <p>6 have much care for him.</p> <p>7 Q. How far away from the door of the</p> <p>8 house were you when Officer Somers took you down?</p> <p>9 A. My house is not very big. Five or</p> <p>10 six feet.</p> <p>11 Q. Did you see what was happening with</p> <p>12 Kelly right before you were hit?</p> <p>13 A. No. After I was on the ground, I</p> <p>14 did see something.</p> <p>15 Q. So what did you see after you were</p> <p>16 taken down and saw that it was Rick Somers?</p> <p>17 A. Oh, I had said -- I asked him what</p> <p>18 he did that for, and he says, "Oh, we're sick of</p> <p>19 your shit." Now, keep in mind, this is a guy</p> <p>20 that I thought, you know, had no ill feelings</p> <p>21 against me. "We're sick of your shit." And I</p> <p>22 said, "Why, what did I do?" And something about</p> <p>23 coming down here and blah-blah this. You know,</p> <p>24 talk goes into the station, talk gets around.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q. I see. Was the bookcase empty of</p> <p>2 books?</p> <p>3 A. Yeah.</p> <p>4 Q. And what do you remember next after</p> <p>5 you had that conversation with him while you were</p> <p>6 on the bookcase?</p> <p>7 A. Well, I remember seeing -- oh, let</p> <p>8 me see. I remember them saying to Kelly, "You're</p> <p>9 under arrest." This is after they're inside the</p> <p>10 door. There was one or two of them inside, and</p> <p>11 somebody was outside standing. I don't know if</p> <p>12 they were on the ground, but they looked awful</p> <p>13 short, so maybe the plywood moved or something.</p> <p>14 I don't know why it would move, though.</p> <p>15 Q. And what's the next thing you</p> <p>16 remember happening?</p> <p>17 A. I remember Kelly screaming for me</p> <p>18 to help her. I said, "I can do nothing."</p> <p>19 Q. And you were still on the bookcase</p> <p>20 at that point?</p> <p>21 A. Yeah.</p> <p>22 Q. And was Somers holding you down?</p> <p>23 A. He was holding me down, and I see</p> <p>24 Kelly on the floor and Somers kicking her feet as</p>

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<p style="text-align: right;">Page 58</p> <p>1 he's holding me down, so he's trying to hold her 2 feet down. 3 Q. How was he holding you down, did he 4 have you by a shoulder? 5 A. No, he had me by the sweater that I 6 had on, right here (indicating). 7 Q. Okay. Was he putting force on your 8 chest when he was holding you by your sweater? 9 A. Yeah, I was squished between him 10 and the bookcase. 11 Q. And then what happened next? 12 A. I'm being held down, and finally -- 13 well, I'm not sure what's going on, but finally 14 he let me up, as they were taking her out. 15 Q. Can you give me your best estimate 16 as to how long he was holding you down? 17 A. I would say anywhere from a minute 18 and a half to three minutes. 19 Q. Was he physically preventing you 20 from getting up? 21 A. I wasn't even trying to get up. 22 Q. You were staying down because it 23 was clear to you he wanted you there? 24 A. Yeah. Well, I mean, I was</p>	<p style="text-align: right;">Page 60</p> <p>1 dizzy? 2 A. Well, no, I didn't have trauma. I 3 didn't have trauma, no. 4 Q. Okay. And so when Somers 5 finally -- 6 A. That I know of, 'cause I don't know 7 if my personality has changed or not from that. 8 Q. Now, when Somers let you up, what 9 was the first thing you saw? 10 A. Him. 11 Q. Somers? 12 A. Standing in front of me, yeah. 13 Q. Did you speak to him at that point? 14 A. Not at that point, no. 15 Q. Did he say anything to you? 16 A. I might have said, "What's going to 17 happen to her?" I know I had said this at one 18 time, and he said, "Oh, she'll be taken down the 19 station, and you can come down and bail her out." 20 Q. Had she been taken out of the house 21 by the time he let you up? 22 A. Yeah, I don't know whether I was on 23 me feet or not. 24 Q. Did you --</p>
<p style="text-align: right;">Page 59</p> <p>1 dumbfounded. I had just been knocked off my 2 feet, not that it would have phased you, you 3 know. So did I rush up, no. As soon as I was 4 let up, then I would get up, yes. 5 Q. Were you at all dazed or confused 6 as a result of having been hit? 7 A. That's what dumbfounded means. I 8 was confused from watching what I saw outside 9 because I didn't experience anything like that 10 before. 11 Q. Did you feel dizzy or that you 12 weren't sure that you were perceiving what was 13 going on because you had been hit in the face or 14 did you feel that you could understand what was 15 going on even though it was hard to see a reason 16 for it? 17 MR. SHARP: I'm not sure I 18 understand. 19 Q. Should I clarify? 20 MR. SHARP: Are you asking was it 21 emotional or physical? 22 Q. I guess what I'm saying is 23 sometimes when people are hit in the face or the 24 head, they can feel, like, a little bit faint or</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I would say no because I guess I 2 was considered a threat. Why, I have no idea. 3 Q. I think you said that while Somers 4 was holding you down you saw him trying to hold 5 Kelly's foot down or something like that. Did 6 you notice anything else about how the police 7 were trying to place her under control or under 8 arrest? 9 A. I seen them have her shoulders 10 down, and her arms were pinned under her, 'cause 11 they were trying to get them, her arms, and 12 Somers was kicking her foot down, and I don't 13 know if they got her arms before they lifted her 14 up or not. 15 Q. Did you see whether she was 16 struggling? 17 A. Now, would I struggle if my arms 18 were under me and there was people jumping on my 19 back? How do I answer that. Did I see her 20 struggling, yes. 21 Q. What was she doing, exactly, if you 22 can remember, if you can just describe it in 23 words the best you can. 24 A. Squirming around and her feet was</p>

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<p style="text-align: right;">Page 62</p> <p>1 moving.</p> <p>2 Q. So her feet and shoulders were</p> <p>3 squirming?</p> <p>4 A. Yeah. Her feet weren't moving bad.</p> <p>5 They were just up like this (indicating).</p> <p>6 Q. And she was on her back at that</p> <p>7 point?</p> <p>8 A. No, she was on her stomach.</p> <p>9 Q. She was on her stomach. So her</p> <p>10 hands were under her stomach and against the</p> <p>11 floor?</p> <p>12 A. Yeah, she was like that</p> <p>13 (indicating).</p> <p>14 Q. And it looked like the police were</p> <p>15 trying to pull her hands behind her back so they</p> <p>16 could handcuff her?</p> <p>17 A. Yeah, they're doing this while</p> <p>18 they're telling her to let her arms out, and I</p> <p>19 would say it's awful hard to get your arms out</p> <p>20 with -- she's got to weigh, oh, I'd say, and</p> <p>21 don't tell her this, probably 170, and Donnelly</p> <p>22 has got to weigh 250, and the other officer has</p> <p>23 to weigh at least what I weigh, I'd say better,</p> <p>24 so all that weight on top of you.</p>	<p style="text-align: right;">Page 64</p> <p>1 it that he wasn't in uniform?</p> <p>2 A. No.</p> <p>3 Q. He was off duty?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. Did he say --</p> <p>6 A. I assume he was off duty.</p> <p>7 Q. Did he say anything like, you know,</p> <p>8 I'm a policeman too --</p> <p>9 A. No.</p> <p>10 Q. -- or did he not mention anything</p> <p>11 like that?</p> <p>12 A. I didn't even know who it was until</p> <p>13 I looked up. I never saw him come at me.</p> <p>14 Q. How was he dressed, if you</p> <p>15 remember, just generally?</p> <p>16 A. I can't even remember that.</p> <p>17 Q. Now, you said that -- was it Somers</p> <p>18 who told you you can come down and bail Kelly out</p> <p>19 later on?</p> <p>20 A. He said that she would be down the</p> <p>21 station, and that I could come down and probably</p> <p>22 bail her out, and then I reconfirmed that with</p> <p>23 the chief outside or the sergeant outside later</p> <p>24 on.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. By the way, about how big is Rick</p> <p>2 Somers?</p> <p>3 A. Which way?</p> <p>4 Q. Height and weight.</p> <p>5 A. Height, I'd say he's about this</p> <p>6 much (indicating).</p> <p>7 Q. And you're how tall?</p> <p>8 A. Higher than me. I'm five nine.</p> <p>9 Q. So he may be five eleven or so?</p> <p>10 A. I don't know. I know he's a little</p> <p>11 taller than I am and a little wider than I am and</p> <p>12 probably weighs more than I do.</p> <p>13 Q. How much do you weigh, if you don't</p> <p>14 mind?</p> <p>15 A. Oh, 155, pushing it.</p> <p>16 Q. Do you think Somers might weigh</p> <p>17 175, thereabouts?</p> <p>18 A. I'd say he probably weighs close to</p> <p>19 200 pounds.</p> <p>20 Q. So he's a pretty stocky guy?</p> <p>21 A. Well, he's more belly.</p> <p>22 Q. Okay.</p> <p>23 A. Then his belly was sticking out.</p> <p>24 Q. Now, when Somers came over, I take</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. Did you have any other conversation</p> <p>2 with Somers that you can remember?</p> <p>3 A. I had -- after I was up, let me</p> <p>4 see, I called my friend Joe, and I told him that</p> <p>5 they arrested Kelly and I didn't know what to do</p> <p>6 Q. This is your friend Joe, is it</p> <p>7 Chitick?</p> <p>8 A. Joe Chitick.</p> <p>9 Q. Do you remember anything else from</p> <p>10 your conversation with him?</p> <p>11 A. No, 'cause he didn't know what to</p> <p>12 tell me.</p> <p>13 Q. And so after Somers told you you</p> <p>14 can come down and bail her out later on, you</p> <p>15 don't remember saying anything else to Somers or</p> <p>16 his saying anything else to you?</p> <p>17 A. Well, I went outside. Now, keep in</p> <p>18 mind, I'm under the assumption that he didn't</p> <p>19 think I was a bad guy, and it was always hi and</p> <p>20 bye. You know, I thought he was the nicest guy</p> <p>21 in the world. I really liked him. And I went</p> <p>22 out, and I said, "Rick, what did you do that</p> <p>23 for?" And I says, "What did I ever do to you," I</p> <p>24 said, "other than" -- and he said something</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 about -- I can't remember at that time --</p> <p>2 actually, I had said, I guess, "You said you're</p> <p>3 sick of my shit, what did I ever do to you?" And</p> <p>4 he said something about that's Louie's property.</p> <p>5 And I said, "What are you telling me that's</p> <p>6 Louie's property?" He said, "The judge told him</p> <p>7 to put the garage there." And I had said to him,</p> <p>8 "You're going to stand there and tell me that a</p> <p>9 judge told him to put his garage on a piece of</p> <p>10 property that he does not have proof of</p> <p>11 ownership?" And Rick said, "Ah, no, I guess</p> <p>12 you're right. And I said, "You say you're sick</p> <p>13 of my shit, the last I remember I had my</p> <p>14 surveyors down here to survey out the property,</p> <p>15 you had come out and talked to them and sent them</p> <p>16 away." I said, "What was that about?" I was</p> <p>17 paying them, not him. I was paying them. As a</p> <p>18 matter of fact, they were all paid. I got my</p> <p>19 money back because they didn't want to get</p> <p>20 involved.</p> <p>21 Q. So you're saying that Somers sent</p> <p>22 surveyors away at some point?</p> <p>23 A. No, no. Somers, while I'm paying</p> <p>24 the surveyors, he's having a half hour discussion</p>	<p style="text-align: right;">Page 68</p> <p>1 bleeding from.</p> <p>2 Q. About how big was the cut?</p> <p>3 A. I didn't get a picture of it</p> <p>4 either. About a quarter of an inch.</p> <p>5 Q. A quarter of an inch long?</p> <p>6 A. (Witness nods.)</p> <p>7 Q. Did you see a doctor or go to the</p> <p>8 hospital about it?</p> <p>9 A. No.</p> <p>10 Q. Did it stop bleeding after you put</p> <p>11 a Band-Aid on it or something like that?</p> <p>12 A. Yeah, well, it did stop bleeding.</p> <p>13 I wiped it off, and I went down to the donut</p> <p>14 shop, and my friend said, "What happened to your</p> <p>15 chin?" And I didn't want to get all into it</p> <p>16 about Kelly being over there and I was waiting to</p> <p>17 bail her out.</p> <p>18 Q. Had it stopped bleeding when you</p> <p>19 saw your friend at the donut shop?</p> <p>20 A. I guess it was bleeding again. It</p> <p>21 probably bled for a couple of hours and then</p> <p>22 finally stopped.</p> <p>23 Q. Did you have any injuries anywhere</p> <p>24 else as a result of having been pushed on to the</p>
<p style="text-align: right;">Page 67</p> <p>1 with the surveyors at the time they were sent</p> <p>2 over when they're suppose to be surveying the</p> <p>3 land, and well, I got a letter later on saying</p> <p>4 that we couldn't do it, blah-blah, and a note and</p> <p>5 giving me my money back. It's too screwed up.</p> <p>6 Q. Do you remember anything else that</p> <p>7 Somers said to you or you said to him that day?</p> <p>8 A. That was it.</p> <p>9 Q. Have you spoken with Rick Somers</p> <p>10 since then?</p> <p>11 A. No. I see him a lot.</p> <p>12 Q. Do you --</p> <p>13 A. I see him a lot 'cause he works</p> <p>14 down the courthouse.</p> <p>15 Q. Do you say anything more than maybe</p> <p>16 just a hi?</p> <p>17 A. I don't say anything to him. I had</p> <p>18 one time when I was in the court, the court for</p> <p>19 the case, when Officer Donnelly said, "Hi, George</p> <p>20 how are you doing?" "Hi," and that was it.</p> <p>21 Q. Now, I want to ask you, as a result</p> <p>22 of his hitting you and taking you down, did you</p> <p>23 have any physical wounds?</p> <p>24 A. I had a cut on my chin I was</p>	<p style="text-align: right;">Page 69</p> <p>1 bookcase?</p> <p>2 A. Not that I know, because my body is</p> <p>3 pretty tough, but I'm getting older.</p> <p>4 Q. Did you need to see a doctor at any</p> <p>5 point for anything resulting from this incident?</p> <p>6 A. Well, I needed to. Could I, no.</p> <p>7 Q. You didn't have medical insurance</p> <p>8 at the time?</p> <p>9 A. I have it through my wife.</p> <p>10 Q. If you could just clarify what you</p> <p>11 meant when you said I needed to, but I couldn't?</p> <p>12 A. I really couldn't afford it. Even</p> <p>13 though I had the insurance, you still have --</p> <p>14 what I'm talking about now is more mental --</p> <p>15 Q. I see.</p> <p>16 A. -- and my stomach, and it wouldn't</p> <p>17 be something that they can take care of, you</p> <p>18 know, overnight.</p> <p>19 Q. I see. So what you're saying is</p> <p>20 that you might have considered having some kind</p> <p>21 of --</p> <p>22 A. Break down.</p> <p>23 Q. -- counseling about this if you</p> <p>24 could have afforded it?</p>

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<p style="text-align: right;">Page 70</p> <p>1 A. But it's not just that situation. 2 It's the whole lump sum. 3 Q. You've had some physical effects 4 from the memory of it? 5 A. Yeah. How much does a person take 6 before they snap? I know I've heard of people 7 snapping. How much do they take before it 8 happens? You don't know when it happens. I 9 don't want to get to that point. 10 Q. Mm-hmm. 11 A. So I swallow it. I swallow it. I 12 take a lot. My problem with the neighbor is day 13 in and day out, and I have to sit there and take 14 it, and I literally gag and throw up. When the 15 cops come, I literally throw up, and I'm not a 16 chicken by nature. I have to take this because 17 if I don't -- well, here's a perfect example, my 18 neighbor will come over, and he'll harass and 19 harass and harass, and he'll say, "You're a 20 fucking pussy. If you had any balls, you'd hit 21 me by now." 22 Now, his main objective is to try 23 and get me to hit him. My main objective, 24 through my lawyer's advice, is to ignore him.</p>	<p style="text-align: right;">Page 72</p> <p>1 2002, incident too? 2 A. Yes, but not to the point that it's 3 now. I have to hide in my house. I mean, if I 4 come out and be a man and say back off or you're 5 going to be sorry, then I get a little relief, 6 but if I sit there and take it, it keeps coming, 7 keeps coming, keep digging. What else can I do, 8 what else can I do. It's not a fact that I go 9 over there. It's always him coming over here, 10 because he has the right to walk the sidewalk, he 11 has the right to go on that plot of land on this 12 side, he has the right to work here, look in my 13 windows. I'm crowded right in. And that 14 probably has -- it does have something to do with 15 it, and it doesn't have something to do with it, 16 with what we're talking about here. 17 Q. Now, since this day, April 21st, 18 2002, I take it the cops have come again? 19 A. Oh, constantly. They were there 20 last night. 21 Q. Do you have any estimation of how 22 many times they've come or maybe how often 23 they've come on average in the last, is it about 24 two years?</p>
<p style="text-align: right;">Page 71</p> <p>1 It's awful hard to ignore. So I swallow it. I 2 keep it in, I keep it in, I keep it in. I 3 frigging pace. And this has to do a lot with 4 that too. I pace and pace and pace. I'll smoke 5 a pack of cigarettes in two hours and not even 6 know I did it. I'll pace, pace, pace. 7 Q. So obviously -- 8 A. How do you know when you snap? 9 Q. So obviously you're under a lot of 10 stress from this continuing confrontation? 11 A. It's the whole thing, and believe 12 it or not, it's all related. It's not poor woe 13 is me. It's, like I told her earlier, I'm public 14 enemy number one. It doesn't pay any money, but 15 that's where I am. If it's not the cops, I'm 16 poisoned, all the neighbors, and not because of 17 what I did to them or what they see. It's 18 because of what -- my neighbor Mr. Rubbo goes in 19 blah-blah-blah, blah-blah-blah, this guy is 20 trying to steal my land, blah-blah-blah, and Rick 21 Somers happens to be one of those neighbors, and 22 his son lives across the street. 23 Q. Had you been feeling this sort of 24 anxiety and frustration before this April 21st,</p>	<p style="text-align: right;">Page 73</p> <p>1 A. I've already told you that. 2 Q. About the last two years, though. 3 A. It was all told. I put a number on 4 it. I would say 30 times, give or take. 5 Q. I see. So when you said 30 -- 6 A. I don't know exactly. 7 Q. So when you said 30 or 35 earlier, 8 you were talking about for the entire time until 9 today? 10 A. Yeah, to the best of my knowledge. 11 Q. Okay. Do you have an estimate of 12 how many times since April 22nd have been part of 13 those 30 or 35? 14 A. Boy, you ask tough questions. How 15 is there a right and a wrong to that question? 16 Q. You don't have to be precise. If 17 you would just give your best estimate, that's 18 all that you're asked to do, not guess but best 19 estimate? 20 A. Fifteen, twenty, best guess. 21 Q. I think you said a few items in 22 your home were damaged because of this. 23 A. The microwave got stepped on. 24 Q. Do you know how that happened?</p>

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<p style="text-align: right;">Page 74</p> <p>1 A. I have no idea. I just know 2 that -- it wasn't a big microwave, but I just 3 know that it got squashed. 4 Q. Was that on the floor too, as part 5 of your moving? 6 A. Well, we had been moving stuff, 7 right. 8 Q. Okay. So at some point somebody 9 stepped on it? 10 A. Yeah, it was no good. 11 Q. And the coffee table, same thing? 12 A. Well, we were using it for a 13 kitchen table, and the legs snapped right off. 14 Q. Okay. Were you able to repair the 15 coffee table or microwave or did you have to 16 replace them? 17 A. Got rid of it. 18 Q. Okay. How much did it cost to 19 replace them? 20 A. Well, my house is not that big. My 21 house is 20 by 18. I have a card table which I'm 22 using now. 23 Q. Did you replace the microwave? 24 A. I got one given to me.</p>	<p style="text-align: right;">Page 76</p> <p>1 nine-page handwritten statement that says on the 2 top "On 20's of April, 20, 21, 22," and I'll just 3 have the witness look at it and just ask you if 4 you recognize that. 5 A. I can tell you right now I 6 recognize it 'cause I wrote it. 7 Q. Now, when did you write this? 8 A. The exact date is probably maybe a 9 week after. I had to wait until I calmed down. 10 Q. What motivated you to sit down and 11 write that? 12 A. That's the only means of release 13 that I have. I'm not going to the gym now, so. 14 And when you start writing -- and also, I'm 15 advised by my lawyer to write -- 16 Q. Oh, I don't want you to say 17 anything that your lawyer has told you. 18 A. No, no, but I'm advised, whoever 19 that lawyer may be, to log everything. 20 Q. Okay. Did you speak with Kelly or 21 with anybody else in the process of getting all 22 your recollections together and writing it down 23 or did you do it just from your own memory? 24 A. You mean did she influence me? No,</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay. Did you miss any work 2 because of having been hit and tackled that day? 3 A. Oh, because of the cut on my chin? 4 Q. Yeah. 5 A. No. Have I missed any work because 6 of this whole situation, yes. 7 Q. Okay, I can understand that. 8 A. Have I been out of work for three 9 years, pretty much. Off and on work. Got to go 10 to court this day, nobody wants to keep you. If 11 you're not there, you're only as good as when 12 you're there. 13 Q. Have you been able at any point to 14 talk to a counselor or a psychologist or a 15 therapist about all of this stress, at any point 16 since this incident? 17 A. No. My counsel or my therapist is 18 my cigarettes. I don't drink, thank God. 19 MR. CARLSON: I ask the court 20 reporter to mark this as Exhibit 1. I know you 21 have seen this before? 22 (Exhibit No. 1 was marked 23 for identification.) 24 Q. Just for the record, this is a</p>	<p style="text-align: right;">Page 77</p> <p>1 I was told I had to write. I said, "I will write 2 it when I'm ready. I can't do it right now." 3 Q. I guess all I'm saying is when you 4 sat down and wrote that, did you -- 5 A. Was it by myself, yes. By myself 6 sitting in the corner. 7 Q. So you wrote it just from your own 8 memory? 9 A. Yes. From my own memory, yes. 10 Q. You estimated 15 or 20 times that 11 the police have come to deal with the situation 12 with Rubbo and you since April 21st, 2002. Are 13 there any occasions in that time period where you 14 felt that the Rockland police have acted in a 15 hostile, inappropriate, violent manner toward 16 you? 17 MR. SHARP: Why don't we break that 18 down. 19 A. You mean after that? 20 Q. Yeah, right. 21 A. No. All officers have been -- I 22 mean, they don't always want to tell you what you 23 want to hear, but they've been fairly polite. 24 They're doing their job, and they know it's a</p>

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<p style="text-align: right;">Page 78</p> <p>1 volatile situation.</p> <p>2 Q. What is the current legal status?</p> <p>3 I think you said that you may have litigation</p> <p>4 ongoing right now over this whole property</p> <p>5 ownership issue.</p> <p>6 THE WITNESS: Is it all right to</p> <p>7 answer that?</p> <p>8 MR. SHARP: Sure.</p> <p>9 A. It's a lawsuit for the land as well</p> <p>10 as -- you might be able to answer that better</p> <p>11 than I can.</p> <p>12 MR. SHARP: Yes, but you have to</p> <p>13 try to answer it.</p> <p>14 A. Harassment suit.</p> <p>15 Q. So you've filed a lawsuit against</p> <p>16 Mr. Rubbo?</p> <p>17 A. Yes.</p> <p>18 Q. Is this in superior court?</p> <p>19 A. Yes.</p> <p>20 Q. Okay.</p> <p>21 A. It's mainly -- I'm more concerned</p> <p>22 with getting back what's mine.</p> <p>23 Q. Maybe your lawyer could help you</p> <p>24 correct this if the right terminology isn't so</p>	<p style="text-align: right;">Page 80</p> <p>1 court decision on this issue yet?</p> <p>2 A. I have no idea.</p> <p>3 Q. Okay. Do you remember when you</p> <p>4 started the lawsuit, when you filed the lawsuit?</p> <p>5 A. The date, no.</p> <p>6 Q. Was it within the last year?</p> <p>7 A. You're asking me dates that I pile</p> <p>8 away. I don't know.</p> <p>9 Q. Maybe I could just ask you, did you</p> <p>10 file that lawsuit after April 21st, 2002?</p> <p>11 A. April 21st, that was the day of the</p> <p>12 incident?</p> <p>13 Q. Right.</p> <p>14 A. I think so.</p> <p>15 Q. Okay.</p> <p>16 A. That's the best I can say.</p> <p>17 Q. Okay.</p> <p>18 A. I had no choice, for one thing, and</p> <p>19 it has to be done.</p> <p>20 Q. Mm-hmm.</p> <p>21 A. Even if it comes out not the way</p> <p>22 that I want it, it has to be done or this is</p> <p>23 going to go on forever, and the police officer</p> <p>24 time and time again, "You've got to get it into</p>
<p style="text-align: right;">Page 79</p> <p>1 familiar for you. Are you seeking to quiet title</p> <p>2 to the land or to clear title?</p> <p>3 A. Clear title, yes.</p> <p>4 Q. Clear title, okay.</p> <p>5 A. As it stands right now, nothing can</p> <p>6 be done. It can't be sold. I can't get a</p> <p>7 mortgage on it. How things have been sold in the</p> <p>8 past, I don't know.</p> <p>9 Q. So you're asking the court to say</p> <p>10 definitively this is where the line is?</p> <p>11 A. Well, I want them to see what is</p> <p>12 what, not what documentation is showing. It</p> <p>13 boils down to this, the question is something is</p> <p>14 wrong. Now, is it a pencil error or did somebody</p> <p>15 build the houses in the wrong place.</p> <p>16 Q. At what point is this lawsuit,</p> <p>17 what's going on in the case right now?</p> <p>18 A. I think I'm waiting to redo my</p> <p>19 deposition.</p> <p>20 Q. Okay. So you're in discovery like</p> <p>21 we're doing right now?</p> <p>22 A. I assume. We sent them a letter,</p> <p>23 and they haven't got back to us.</p> <p>24 Q. Okay. So there hasn't been any</p>	<p style="text-align: right;">Page 81</p> <p>1 court to get this straightened out."</p> <p>2 Q. Okay. Let me ask you, do you have</p> <p>3 any knowledge about how the Rockland Police</p> <p>4 Department might train its officers regarding</p> <p>5 using force and what force is excessive?</p> <p>6 A. How would I?</p> <p>7 Q. You don't, then?</p> <p>8 A. No. How would I? I'm not a police</p> <p>9 officer. I haven't gone through the training.</p> <p>10 Q. A similar thing, you wouldn't have</p> <p>11 any knowledge of how police might be trained in</p> <p>12 how to conduct arrests?</p> <p>13 A. Well, I might have an answer to</p> <p>14 this question, but maybe not what you're looking</p> <p>15 for. Do I think that the senior officers</p> <p>16 influence, and I've seen it, the younger officers</p> <p>17 that see things going one way and the officers</p> <p>18 don't want it to go that way and they take the</p> <p>19 kid aside and say something, yeah. Do I think</p> <p>20 there's influence on the older officers to the</p> <p>21 younger officers, yes, I do.</p> <p>22 Q. But do you have any firsthand</p> <p>23 knowledge of how officers are given training on</p> <p>24 how to conduct arrests?</p>

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<p style="text-align: right;">Page 82</p> <p>1 A. Physical training, no.</p> <p>2 Q. In terms of policies. I mean, have</p> <p>3 you seen any policy manuals, have you talked to</p> <p>4 any police about what kind of training they</p> <p>5 actually get and so on?</p> <p>6 A. (Witness shakes head.)</p> <p>7 Q. That's a "no"?</p> <p>8 A. No. I don't know how I would know</p> <p>9 that.</p> <p>10 Q. Okay. Apart from this April 21st,</p> <p>11 2002, incident and maybe also the time when you</p> <p>12 said that Officer Doranzo, if I remember, elbowed</p> <p>13 you in the ribs --</p> <p>14 A. No, no.</p> <p>15 Q. Did I get that wrong?</p> <p>16 A. Yeah. I don't know the name of the</p> <p>17 officer that did it. It definitely wasn't</p> <p>18 Doranzo.</p> <p>19 Q. Okay. Some officer elbowed you in</p> <p>20 the ribs?</p> <p>21 A. Yeah, it was a motorcycle cop, big</p> <p>22 one. His name I don't know. As a matter of</p> <p>23 fact, he was over there last night, and he was</p> <p>24 over there a couple of weeks ago.</p>	<p style="text-align: right;">Page 84</p> <p>1 in cuffs, carrying him.</p> <p>2 Q. What were they arresting him for,</p> <p>3 if you know?</p> <p>4 A. Oh, I don't know. He might have</p> <p>5 been on drugs or something. I was a teenager</p> <p>6 then.</p> <p>7 Q. So that was decades ago?</p> <p>8 A. Yeah. Hey, decades?</p> <p>9 Q. I'm getting up there too, sir. If</p> <p>10 we can just take a break for a few minutes, I'm</p> <p>11 probably close to being done. I just want to</p> <p>12 look over my notes and see if I missed anything.</p> <p>13 (A break was taken.)</p> <p>14 Q. (By Mr. Carlson) I think I'll just</p> <p>15 have a couple of more questions, and then, unless</p> <p>16 Mr. Sharp wants to ask you anything, we will be</p> <p>17 done and have you on your way. I may be covering</p> <p>18 stuff we've gone over before, but I just want to</p> <p>19 make sure that we're clear for the record.</p> <p>20 After you went into your house and</p> <p>21 closed the door and then Kelly came in and closed</p> <p>22 the door and then the police came in after, was</p> <p>23 there any break in time at all between the time</p> <p>24 that the police came in and Somers hit you and</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Okay. But apart from those two</p> <p>2 incidents, do you know of any other incidents</p> <p>3 involving you or other people in which you</p> <p>4 believe Rockland police have used excessive</p> <p>5 force?</p> <p>6 A. This is the second time you asked</p> <p>7 me that question.</p> <p>8 Q. The first time I was just asking</p> <p>9 you specifically. Now I'm talking about you or</p> <p>10 anybody else, if you know of any other incidents</p> <p>11 where --</p> <p>12 A. Since that time, no, no.</p> <p>13 Q. What about prior to it, do you know</p> <p>14 of any other incidents involving other people</p> <p>15 where you've heard or you believe the Rockland</p> <p>16 cops may have used --</p> <p>17 A. Well, the time I got stuck in the</p> <p>18 ribs with the elbow, and then years ago I had a</p> <p>19 friend that was in McDonald's, and I think it</p> <p>20 took eight or nine cops to drag him down. I</p> <p>21 mean, I watched that.</p> <p>22 Q. What happened with that incident?</p> <p>23 A. The kid was a little smaller than I</p> <p>24 was, and it took all nine of them to take him out</p>	<p style="text-align: right;">Page 85</p> <p>1 took you down or can you really not separate</p> <p>2 those events at all?</p> <p>3 A. It was instantaneous. I'd be</p> <p>4 assuming Somers was the very first one in there.</p> <p>5 Q. Because you said you were standing</p> <p>6 only five or six feet from the door?</p> <p>7 A. I was standing back too, and I just</p> <p>8 turned around, that's how quick it was.</p> <p>9 Q. And then I think you said that</p> <p>10 while you were being held down on the bookcase</p> <p>11 and Kelly was on the ground too, you heard her</p> <p>12 saying things like, "George, George, help me"?</p> <p>13 A. "Help me, help me."</p> <p>14 Q. Do you remember anything else that</p> <p>15 she said?</p> <p>16 A. I remember her getting her head</p> <p>17 slammed off of the threshold.</p> <p>18 Q. Do you remember her saying anything</p> <p>19 else?</p> <p>20 A. What did they say. Oh, what did</p> <p>21 they say. I remember them saying something to</p> <p>22 her.</p> <p>23 Q. Do you remember her saying anything</p> <p>24 else other than "George, help me"?</p>

22 (Pages 82 to 85)

GEORGE STODDARD
May 28, 2004

<p style="text-align: right;">Page 86</p> <p>1 A. "Help me, George," and she was 2 crying. 3 Q. She just said that over and over? 4 A. Yeah. "Help me. How come you're 5 not helping me, helping me." I said, "Well, what 6 am I going to do, Kelly? Go quietly." 7 Q. I think that's probably it for me. 8 A. I said that a few times as they are 9 taking her out the door. 10 MR. CARLSON: Do you have any 11 cross? 12 13 EXAMINATION 14 BY MR. SHARP: 15 Q. Do you remember anything about 16 Kelly's blouse or shirt? 17 A. Well, nobody asked me. 18 Q. Right, but do you remember anything 19 about it? 20 A. Yeah. Well, I remember when they 21 finally got her up on her feet and they had the 22 handcuffs on her -- well, that's right too, she 23 was screaming that her shirt was above her chest 24 and the cops had lifted her up, and her shirt was</p>	<p style="text-align: right;">Page 88</p> <p>1 CERTIFICATE 2 I, Maryellen Coughlin, a Registered 3 Professional Reporter and Notary Public of the 4 State of Massachusetts, do hereby certify that 5 the foregoing is a true and accurate transcript 6 of my stenographic notes of the deposition of 7 GEORGE STODDARD, who appeared before me, 8 satisfactorily identified himself, and was by 9 me duly sworn, taken at the place and on the 10 date hereinbefore set forth. 11 I further certify that I am neither 12 attorney nor counsel for, nor related to or 13 employed by any of the parties to the action in 14 which this deposition was taken, and further 15 that I am not a relative or employee of any 16 attorney or counsel employed in this case, nor 17 am I financially interested in this action. 18 THE FOREGOING CERTIFICATION OF THIS 19 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF 20 THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT 21 CONTROL AND/OR DIRECTION OF THE CERTIFYING 22 REPORTER. 23 24 MARYELLEN COUGHLIN, RPR</p>
<p style="text-align: right;">Page 87</p> <p>1 still there. 2 Q. That's all. 3 A. And then I remember one of the 4 officers going "Wow." 5 MR. SHARP: I think we're finished. 6 (Deposition concluded at 12:26 p.m.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 89</p> <p>1 UNITED STATES DISTRICT COURT 2 DISTRICT OF MASSACHUSETTS 3 C.A. NO: 03-10461-DPW 4 5 ***** 6 GEORGE STODDARD, * 7 Plaintiff * 8 Vs. * 9 RICHARD SOMERS, in his personal * 10 and official capacity, and THE * 11 TOWN OF ROCKLAND, MASSACHUSETTS, 12 Defendants * 13 ***** 14 15 I, GEORGE STODDARD, do hereby 16 certify, under the pains and penalties of 17 perjury, that the foregoing testimony is true 18 and accurate, to the best of my knowledge and 19 belief. 20 WITNESS MY HAND THIS ____ day of 21 _____, 2004. 22 23 _____ 24 GEORGE STODDARD</p>

23 (Pages 86 to 89)

GEORGE STODDARD
May 28, 2004

Page 90

1 Today's Date: June 30, 2004
2 To: Daniel S. Sharp, Esq.
3 Copied to: Brian D. Carlson, Esq.
4 From: Maryellen Coughlin, RPR
5 Deposition of: George Stoddard
6 Taken: May 28, 2004
7 Action: Stoddard vs. Somers, et al.
8
9

10 Enclosed is a copy of Mr. Stoddard's
11 deposition. Pursuant to the Rules of Civil
12 Procedure, Mr. Stoddard has thirty days to sign
13 the deposition from today's date.

14 Please have Mr. Stoddard sign the
15 enclosed signature page. If there are any
16 errors, please have him mark the page, line, and
17 error on the enclosed correction sheet. He
18 should not mark the transcript itself. This
19 addendum should be forwarded to all interested
20 parties.

21 Thank you for your cooperation in this
22 matter.
23
24

24 (Page 90)

EXHIBIT B

Page 1

1
2 Volume: 1
3 Pages: 1 to 50
4 Exhibits: None
5
6 UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF MASSACHUSETTS
8 C.A. No. 03 10461 DPW
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GEORGE STODDARD,)
Plaintiff)
vs.)
RICHARD SOMERS, in his personal)
and official capacity, and)
THE TOWN OF ROCKLAND,)
MASSACHUSETTS,)
Defendant)

DEPOSITION of DEBORAH ANN KELLY,
a witness called on behalf of the
Defendant, pursuant to the applicable
provisions of the Federal Rules of
Civil Procedure, before Judith R. Sidel,
Professional Court Reporter and Notary
Public, in and for the Commonwealth of
Massachusetts, at the Office of Pierce,
Davis, Perritano, LLP, 10 Winthrop
Square, Boston, Massachusetts 02110-1257,
on Tuesday, July 6, 2004, commencing at
10:15 a.m.

APPEARANCES: (Continued on page 2)

* * * * *

SIDEL COURT REPORTING
Certified Shorthand Reporters
35 Tudor Road
Needham, Massachusetts 02492

Page 2

1 APPEARANCES (Continued):
2
3 DANIEL S. SHARP, ESQUIRE
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6 Marblehead, Massachusetts 01945
7 On behalf of the Plaintiff
8
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BRIAN D. CARLSON, ESQUIRE
PIERCE, DAVIS, PERRITANO, LLP
10 Winthrop Square
Boston, Massachusetts 02110-1257
On behalf of the Defendant

Page 3

1 I N D E X
2
3 WITNESS DIRECT CROSS REDIRECT RECROSS
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5 Deborah Ann Kelly
6 (By Mr. Carlson) 4
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8 E X H I B I T S
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10 NO. DESCRIPTION PAGE
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12 None
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Page 4

1 S T I P U L A T I O N S
2 It is hereby stipulated and
3 agreed by and between counsel for the
4 respective parties that the deposition
5 will be read and signed under the pains
6 and penalties of perjury. It is also
7 stipulated that the notarization will be
8 waived.
9 Failure to sign transcript
10 within thirty (30) days will deem the
11 signature waived.
12 It is further stipulated and
13 agreed that all objections, except as to
14 form, and motions to strike are reserved
15 until the time of trial.
16 * * *
17 DEBORAH ANN KELLY, a witness
18 called by counsel for the Defendant, upon
19 production of driver's license, being
20 first duly sworn, was examined and
21 testified as follows:
22 DIRECT EXAMINATION
23 BY MR. CARLSON:
24 Q. Miss Kelly, just before we start, just

Page 5

Page 7

1 a few things. Your attorney has probably
 2 explained them to you, but just to remind
 3 you, since this is sort of an artificial
 4 type proceeding. Have you ever been
 5 deposed before?
 6 A. What does that mean?
 7 Q. Have you ever been in a deposition like
 8 this before?
 9 A. I don't think so.
 10 Q. If I could just ask you to let me finish
 11 each question before you begin answering;
 12 so that the court reporter can take
 13 down the questions and answers clearly,
 14 that would be appreciated, and if you
 15 can speak as clearly and as slowly as
 16 possible. If you don't understand, as
 17 I said, any question that I ask, please
 18 just ask me to rephrase it. If at any
 19 point you need to clarify or change an
 20 answer, just feel free to do that too.
 21 It's possible that Mr. Sharp may object
 22 when I ask a question. Unless he tells
 23 you not to answer the question, you
 24 can go ahead and do that. He's just

1 Q. Of this year?
 2 A. Yes.
 3 Q. Were you employed previously to that?
 4 A. Stop & Shop in Norwell.
 5 Q. Can you briefly summarize your
 6 educational background beginning with
 7 high school?
 8 A. I graduated from Mt. St. Joseph Academy
 9 in Rutland, Vermont. Then I went on to
 10 the University of Vermont, and I have a
 11 degree in medical laboratory technology
 12 in 1971.
 13 Q. And you graduated from high school in
 14 1971?
 15 A. No, I graduated from college in 1971.
 16 Q. What year did you graduate from high
 17 school?
 18 A. '69.
 19 Q. Do you have any further education?
 20 A. You mean like going to school?
 21 Q. Formal education.
 22 A. Formal?
 23 Q. Uh-huh.
 24 A. I took a real estate course, but that's

Page 6

Page 8

1 reserving his right to challenge it
 2 later on. Finally, if you need to take
 3 a break to use the restroom, or talk
 4 to Mr. Sharp at any point, that's fine.
 5 I just request that if I've asked a
 6 question, you answer that before doing
 7 so.
 8 A. Okay.
 9 Q. If you could just state your current
 10 address?
 11 A. 51 Wilson Street, Rockland,
 12 Massachusetts.
 13 Q. How long have you lived there?
 14 A. Since August of 1993.
 15 Q. Where did you live previously?
 16 A. 104 Elm Street in Marblehead,
 17 Massachusetts.
 18 Q. Are you currently employed?
 19 A. Yes, I am.
 20 Q. Where are you employed?
 21 A. I'm a hostess at TGt Fridays in Norwell.
 22 Q. How long have you been employed there?
 23 A. Since the end of February, beginning of
 24 March.

1 about it.
 2 Q. Did you practice as a Realtor at some
 3 point?
 4 A. No.
 5 Q. Now you are acquainted with the plaintiff
 6 in this case, George Stoddard?
 7 A. Yes.
 8 Q. When did you become acquainted with
 9 Mr. Stoddard?
 10 A. I believe it was 2000, the year 2000 in
 11 November.
 12 Q. How did you meet him?
 13 A. I met him at work.
 14 Q. What work was that?
 15 A. We were both union carpenters working in
 16 a vent building for the Walsh Company.
 17 Q. Where was that?
 18 A. In Boston in the North End.
 19 Q. And is Mr. Stoddard's current address
 20 the same as yours?
 21 A. Yes.
 22 Q. Would you describe yourself as having a
 23 dating relationship with him?
 24 A. No.

Page 9

Page 11

1 Q. Just a friend?

2 A. Yes.

3 Q. Now you're aware of an ongoing conflict

4 that Mr. Stoddard has been having with

5 his neighborhood, Louis Rubbo, regarding

6 the property line between the two houses?

7 A. Yes.

8 Q. When did you first become aware of a

9 dispute over that issue?

10 A. At the beginning of 2001. It might have

11 been 1999, when I met him. I really

12 don't remember.

13 Q. Just your best estimate is fine.

14 A. Okay.

15 Q. How did you become aware of that? Did

16 Mr. Stoddard tell you?

17 A. Yes. I went to his house on occasion,

18 and he told me the story.

19 Q. What did he tell you, as best you can

20 remember?

21 A. He told me that he met, or he was in a

22 coffee shop, and his neighbor came up to

23 him, or didn't come up to him, came to

24 the register and George said he said hi

1 A. Yes.

2 Q. Do you remember the first time that you

3 were there and the police were called,

4 when that was?

5 A. I believe it was the spring or the summer

6 of 2000 or 2001. I actually don't

7 remember which year. I have a notebook

8 that would tell me.

9 Q. What happened on that occasion, as best

10 you can remember?

11 A. He said I was parking on his property.

12 Q. Rubbo told you that personally?

13 A. Well, both of us, we were both there,

14 George and myself.

15 Q. So, you were standing outside when he

16 confronted you?

17 A. Yes.

18 Q. How did you respond, or how did you

19 respond, if you did?

20 A. I don't believe I said much. I think

21 George pretty much handled it and said,

22 This is my property. She is not on your

23 property.

24 Q. Do you know who called the police that

Page 10

Page 12

1 to him. Rubbo didn't answer him. And he

2 said -- George said to him, Do you have a

3 problem with me? And he says, Yeah. He

4 says, I own the house your own, something

5 like that, and I own your property. I'll

6 give you a little something for it, just

7 so you don't lose everything. That's how

8 it started.

9 Q. Did George tell you when that

10 conversation took place?

11 A. I believe it took place, I'm guessing,

12 1997 maybe, '98 possibly.

13 Q. Did George tell you how he responded to

14 that statement by Rubbo?

15 A. He said it just got him to thinking, and

16 he didn't understand what he meant.

17 Q. Now, is it correct that on a number of

18 occasions police have been called by

19 one person or another to intervene in

20 disputes between Mr. Stoddard and

21 Mr. Rubbo?

22 A. Yes.

23 Q. Have you been present for some of those

24 occasions in which the police have come?

1 day?

2 A. It would have been Rubbo, I believe.

3 Q. How did that happen? Did he have a cell

4 phone, or did he go into his house and

5 call?

6 A. I don't remember.

7 Q. And what happened when the police

8 arrived?

9 A. To the best of my knowledge, they said

10 that they couldn't be involved in

11 anything like that. I know that George

12 tried to show him papers that he did, in

13 fact, own the property. Rubbo said that

14 he owned the property, and the police

15 just said, We can't get involved. We're

16 not -- this isn't what we do.

17 Q. Did they leave after some point after

18 saying that?

19 A. Yes, they left.

20 Q. And did your confrontation with Mr. Rubbo

21 end when the police left?

22 A. Yeah, he would come outside a lot and

23 spit at the truck and yell obscenities,

24 but I didn't talk to him.

Page 13

1 Q. I realize this is not something you'll
2 remember with precision right now. Could
3 you give me your best approximation of
4 how many times the police had been called
5 since that occasion that you're aware of?
6 A. I would say at least 30, 35 times.
7 Q. When was the most recent occasion?
8 A. I'd say about a week ago, maybe.
9 Q. What happened on that occasion?
10 A. I remember Rubbo called them, and I was
11 in the house. I didn't go out, but I
12 looked out the window. I had the
13 screen -- the window open. And Rubbo
14 started saying something to the police
15 about George compromising the wall, or
16 the patio that he was building, because
17 of the water drain off, something like
18 that. And the cops shook their head and
19 said, We don't care.
20 Q. Can you clarify when he said compromising
21 wall?
22 A. There's water that runs off the street,
23 and there is a thing that diverts the
24 water that George had installed, and it

Page 14

1 runs beside the house, which is right
2 next to where he put granite, Rubbo put
3 granite. And the more the water rushed
4 down there, the more it started to sink,
5 his granite did.
6 And one day the granite finally
7 fell over, and that's when he called the
8 police. And police says, We don't care
9 anymore. Have a nice day and they left.
10 Q. Was George also home at the time?
11 A. No, he was not.
12 Q. Did you speak with the police, when they
13 came?
14 A. No.
15 Q. So, you just overheard the police talking
16 to Mr. Rubbo outside?
17 A. Yes.
18 Q. Now, as you know, we're here because of
19 an incident that happened on April 21st,
20 2002 involving you, Mr. Stoddard, and Mr.
21 Rubbo. Let me first ask you, I believe
22 the day before that, on the 20th, your
23 car was parked in the driveway adjoining
24 the two houses.

Page 15

1 A. Correct.
2 Q. And it was parked on Mr. Rubbo's side
3 of the driveway, is that right?
4 A. It depends on how you look at it. It's
5 actually -- he thinks it's his driveway.
6 George thinks it's his driveway.
7 Q. And was your car parked on, at least
8 partially, the side of the driveway that
9 you and Mr. Stoddard admit is Mr.
10 Rubbo's?
11 A. It's not his property, no, but he does
12 use it as a driveway. We don't use it as
13 a driveway. He does.
14 MR. SHARP: Let's go off for a
15 second.
16 (Off the record.)
17 (Back on the record.)
18 MR. SHARP: So, we've just
19 had an off the record conversation, and
20 strictly for purposes of this deposition
21 to expedite the deposition, we're going
22 to call the driveway that is in front of
23 Rubbo's garage Rubbo's driveway. This is
24 without Deborah Kelly conceding that it

Page 16

1 is, in fact, Rubbo's property, but we're
2 going to call it Rubbo's driveway.
3 And then the dirt strip that runs
4 between "Rubbo's driveway" and George's
5 house, we're going to refer to as
6 George's driveway or Stoddard's driveway,
7 again without any concession by anyone
8 whose property that actually might be.
9 MR. CARLSON: That's fine.
10 Q. And given how Mr. Sharp just described
11 it, was your car parked on Stoddard's
12 driveway or Rubbo's?
13 A. Rubbo's.
14 Q. When did you move it there?
15 A. The day before, I believe. I can't
16 remember, but I think it was the day
17 before for the first time.
18 Q. Was there a reason that you parked it
19 on Rubbo's driveway as opposed to
20 Stoddard's?
21 A. Yes, because Rubbo parked in Stoddard's
22 driveway, and I had no place to park.
23 Q. Had that happened before?
24 A. Not in that exact manner. He blocked

Page 17

1 Stoddard's driveway, but didn't actually
2 pull right into it. It affected me
3 anyway.
4 Q. He blocked it by parking in the street in
5 front of it?
6 A. Yes.
7 Q. How many times had that happened, if you
8 remember?
9 A. Dozens.
10 Q. Where did you park your truck, when he
11 would do that?
12 A. I would just pull it into the street
13 just enough; so other cars could get by.
14 Q. And so, when you said that you had no
15 place to park, what you meant is there
16 was no driveway place for you to park?
17 A. Yes, there is the parking ban in the
18 wintertime that you have to be off the
19 street.
20 Q. How many months does that apply for?
21 A. I'm not sure, but it goes until April,
22 I think.
23 Q. Until the end of April?
24 A. I think so, but I don't know.

Page 18

1 Q. Does that mean that you can't park it
2 overnight on the street?
3 A. Correct.
4 Q. And was Mr. Rubbo's car parked near yours
5 on April 21st?
6 A. It was in Stoddard's driveway.
7 Q. It was in Stoddard's driveway. And am I
8 right that at some point the following
9 day on April 21st you learned that the
10 tires on your truck had been flattened?
11 A. Yes.
12 Q. And how did you learn that?
13 A. George told me. He said, Kelly, they
14 just -- Rubbo just pulled all the valve
15 stems out of your tires. He says, I
16 tried to pump them up with a compressor,
17 but they just went flat again.
18 Q. At what point in the day did he tell you
19 that?
20 A. I can't remember -- in the morning, I
21 believe.
22 Q. And your tires had not been flattened,
23 when you had gone to bed the night
24 before?

Page 19

1 A. I can't remember.
2 Q. Had you ever previously had problems
3 with having your tires flattened, when
4 you parked there?
5 A. No, I've never parked there before.
6 Q. So, that was the first time that you
7 parked in Rubbo's driveway?
8 A. Yes.
9 Q. What happened after George told you that
10 your tires had been flattened?
11 A. I asked him if he could fix them; so he
12 went and got some stuff to try and fix
13 them, some new valve stems, but they
14 still weren't holding air. One of them
15 held a little air.
16 Q. Was this at some point in the morning
17 that day?
18 A. Yes.
19 Q. And this was a Sunday morning, is that
20 right?
21 A. Yes.
22 Q. Were you with George, when he tried to
23 fix your tires?
24 A. No.

Page 20

1 Q. How did you learn that he hadn't been
2 able to fix them?
3 A. He just told me.
4 Q. Did you go out and look at them yourself?
5 A. Yes.
6 Q. And what happened after you noticed, or
7 George told you that he hadn't been able
8 to fix your tires?
9 A. I just started doing some stuff out in
10 the back of the house, cleaning some
11 stuff up, and just trying to figure out
12 what to do.
13 Q. Now, at some point after that, police
14 officers arrived at the house, is that
15 right?
16 A. Yes.
17 Q. About how long after you had gone out to
18 do work out in the yard was that, do you
19 remember?
20 A. Within the half hour I'd say.
21 Q. So, do you think it was early afternoon
22 when the police came or late morning?
23 A. Probably around noon, I'm thinking,
24 sometime around there.

Page 21

1 Q. So, how did you notice the police
2 arrived? Did you hear sirens?
3 A. I did. I heard sirens and tires.
4 Q. And what happened after that?
5 A. George came out back and said, Kelly,
6 I think you ought to come out here.
7 He said, There's -- a tow truck was out
8 there already. I had seen the tow
9 truck. He said, The cops are here.
10 Q. You had seen the tow truck before the
11 police came?
12 A. Yes.
13 Q. Had you been curious why the tow truck
14 had arrived?
15 A. Well, I already knew that part, because
16 Rubbo called them to tow it, but George
17 was dealing with it. I wasn't.
18 Q. Had George told you that Rubbo had called
19 a tow truck?
20 A. I just saw it coming, and I went out
21 front and saw it.
22 Q. So, you just assumed that Rubbo had been
23 the one to call the tow truck?
24 A. Well, I heard them talking; so I knew he

Page 22

1 did.
2 Q. You had heard Rubbo and Stoddard arguing?
3 A. Yes.
4 Q. Did you hear Rubbo say, I am going to
5 call a tow truck to George?
6 A. No.
7 Q. What happened after George came to you
8 and said, I think you should come out
9 front?
10 A. I went out front. There was a bunch of
11 police there and a tow truck, and they
12 were talking back and forth.
13 Q. Rubbo and Stoddard were talking?
14 A. No, the tow truck driver and the police.
15 Q. Where was George standing exactly, when
16 you joined him?
17 A. Somewhere near where I usually park my
18 truck, where Rubbo's truck was, but I
19 think he was in the street. I can't
20 remember, in that general vicinity.
21 Q. Now did you go and stand next to George?
22 A. Yes, I did. I'm pretty sure I did.
23 Q. Did you speak with Rubbo after you came
24 out front?

Page 23

1 A. I think I did say something to him, like
2 I'd be happy to move the truck, if I had
3 air in my tires and you move your truck.
4 Q. Did he say anything in response to you?
5 A. He said -- do you want me to, like be
6 graphic exactly what he said.
7 Q. Absolutely.
8 A. He said, Get your fuckin' truck off my
9 fuckin' property now.
10 Q. And did you answer him, when he said
11 that?
12 A. That's when I said, I'd be happy to move
13 it, if there was air in my tires. I
14 don't want to drive on the rims. And he
15 just said, You're a fuckin' cunt and he
16 spit.
17 Q. Do you remember saying anything else to
18 him?
19 A. I can't remember.
20 Q. Do you remember him saying anything else
21 to you besides statements like that?
22 A. I can't remember.
23 Q. Now, at some point the police officers,
24 who had arrived, spoke to you, is that

Page 24

1 right?
2 A. Yes.
3 Q. About how long after you came out front
4 and joined George?
5 A. It all happened pretty quickly, within
6 minutes.
7 Q. Within minutes?
8 A. Uh-huh.
9 Q. A few minutes?
10 A. Yeah.
11 Q. What did the police say to you?
12 A. They told me to move my truck.
13 Q. Do you remember which officer it was who
14 said that to you?
15 A. No.
16 Q. Had you met any of the officers who
17 arrived?
18 A. On previous occasions possibly, but
19 I wasn't really thinking about that.
20 Q. Did you know any of their names?
21 A. Not at the time.
22 Q. Had you become acquainted with them, or
23 you just recognized them from previous
24 times they had come?

Page 25

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1 A. I recognized them, but I didn't know
 2 their names. If I did, I forgot.
 3 Q. Do you remember how many police officers
 4 arrived?
 5 A. It seemed like a lot, but I'm guessing
 6 five or six. I don't remember.
 7 Q. Did you speak with the tow truck operator
 8 at any point?
 9 A. I can't remember that either. I don't
 10 know if it was George or me, but one of
 11 us said, You can't tow that. It's on
 12 private property. And I think George
 13 said, It's my property. I don't remember
 14 if I said anything. I don't remember.
 15 Q. What did you say in response, if
 16 anything, when the police told you to
 17 move your truck?
 18 A. I told them I couldn't, because the tires
 19 were flat.
 20 Q. And how did they respond to that?
 21 A. Something like move your fuckin' truck
 22 within four minutes or you're going to be
 23 arrested. You have four minutes to move
 24 that truck.

1 Q. Was he standing next to you?
 2 A. No, he was leaning on the Volvo, and I
 3 came up to him, when he says, Kelly, and
 4 I said, What? He said, If you are going
 5 to move your truck, you better move it
 6 now.
 7 Q. When you say leaning on the Volvo, was
 8 that George's car?
 9 A. It's registered to me.
 10 Q. Where was the Volvo parked?
 11 A. In the same driveway, but just pulled in
 12 back more, Stoddard's driveway.
 13 Q. So, Rubbo had been blocking the Volvo
 14 before?
 15 A. Yes, he was. It was not registered at
 16 the time.
 17 Q. So, you owned the Volvo, but it wasn't
 18 registered.
 19 A. Yes.
 20 Q. And at some point did a police officer
 21 tell you that you had to move from where
 22 you were standing, because you were
 23 standing on Rubbo's property?
 24 A. Yes, I think he did.

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Page 28

1 Q. So, one of the police cursed?
 2 A. Yes.
 3 Q. How did you respond, when they said, You
 4 have four minutes to move the truck?
 5 A. That's when George was leaning on the
 6 Volvo that was in the driveway also, but
 7 it was pulled back further. He says,
 8 Kelly, if you're going to move your
 9 truck, move it now. Rubbo just moved
 10 his.
 11 Q. Did you see Rubbo move his truck?
 12 A. No, didn't even notice.
 13 Q. And did Rubbo return at any point soon
 14 after that?
 15 A. Yeah, he was standing in the street at
 16 one point.
 17 Q. Did you notice where he parked his car
 18 after he moved it?
 19 A. I didn't notice.
 20 Q. Did you hear George speaking with the
 21 police at that time?
 22 A. No, I didn't hear him talking with the
 23 police at that time. He was pretty
 24 quiet.

1 Q. And, again, just to be clear, when I
 2 say Rubbo's property, I'm not trying to
 3 conceive who actually owns the land.
 4 I'm just asking what they said.
 5 A. I think I recall that, but I don't
 6 remember how it was put to me.
 7 Q. How did you respond?
 8 A. That's when I walked over to George.
 9 Q. And George was standing in Stoddard's
 10 driveway, as we've been saying?
 11 A. Yes, leaning on the Volvo, like sitting
 12 on it kind of on the front.
 13 Q. So, after Rubbo moved his car, George
 14 told you, If you're going to move your
 15 truck, do it now, and then you did, in
 16 fact, get into your truck?
 17 A. Yes.
 18 Q. And what happened after you got into your
 19 truck?
 20 A. I started it up. I backed it out, and I
 21 pulled it right in front of George's
 22 house.
 23 Q. So, you were planning to move it on the
 24 street in front -- onto the street in

1 front of George's house?

2 A. No, I was going to just pull it right in

3 front of George's house. There's too

4 much going on in the street and I have

5 flat tires.

6 Q. So, you were going to move it onto the

7 grass?

8 A. The dirt really, dirt and grass.

9 Q. What did the police say to you

10 immediately before you got into your

11 truck?

12 A. That I had four minutes to move it or I

13 would be arrested.

14 Q. And do you remember them saying anything

15 else?

16 A. No.

17 Q. How far did you move your truck, when you

18 backed it up?

19 A. I backed it up just enough; so I could

20 turn my wheels and come in front of

21 George's house.

22 Q. Can you give me your best estimate of

23 how many feet you moved it?

24 A. Uh-huh, about 40.

1 Q. And so, you kind of moved it at an angle,

2 isn't that right?

3 A. No, straight in front of his house,

4 parallel with his house.

5 Q. And about how long did it take you to

6 move your truck backward?

7 A. Backward, five or 10 seconds. It was

8 pretty quick.

9 Q. And did you see any other police officers

10 outside your truck, when you were moving

11 it?

12 A. No.

13 Q. Did you see them before you started the

14 engine up?

15 A. No, I didn't pay attention to where they

16 were.

17 Q. What happened after you finished moving

18 your truck?

19 A. One or two of the cops started beating on

20 my window. One of them took the stick

21 out of his pocket and smashed the glass.

22 Q. And which window was an officer banging?

23 A. The driver's window.

24 Q. Is your truck a two seater?

1 A. Yes.

2 Q. And so --

3 A. Or three, it's a bench.

4 Q. So, are there rear windows?

5 A. Yes.

6 Q. Were they banging on the rear windows?

7 A. Not that I know of.

8 Q. So, when you say "the driver's window",

9 it's the one immediately next to you?

10 A. Yes.

11 Q. What happened after they were banging on

12 the windows?

13 A. When the glass started to fly, I jumped

14 out of the passenger door, and ran into

15 the house, and closed the door.

16 Q. Did they say anything to you after

17 banging the window open or smashing the

18 window?

19 A. I didn't hear a thing. When my truck

20 starts, the radio just comes on, because

21 I don't shut it off. I wouldn't hurt

22 anything anyway. I don't think they said

23 anything to me. I knew that they were

24 breaking my window.

1 Q. Did you hear an officer say, You're under

2 arrest before you ran into the house?

3 A. No.

4 Q. What happened after you ran into George's

5 house?

6 A. They kicked the door in.

7 Q. Did you close the door before any police

8 came in?

9 A. Yes.

10 Q. Did you lock the door?

11 A. It was too quick.

12 Q. Did you notice how they opened it, if

13 they pushed it open or kicked it? Did

14 you see?

15 A. They kicked it. I don't know how -- they

16 probably turned the knob. I don't know,

17 but they kicked it in. There's a big

18 dent in it.

19 Q. When you went into the house, George had

20 gone in before you?

21 A. Yes.

22 Q. Did you see when he went into the house?

23 A. Not really. I wasn't thinking about it.

24 Q. You saw him, when you went into the

Page 33

1 house?

2 A. Yeah, I saw him when I got into the

3 house.

4 Q. How close to the door was he?

5 A. Maybe eight feet away.

6 Q. What was he doing?

7 A. Just standing there.

8 Q. Did you say anything to him, when you

9 ran into the house?

10 A. No, because when I got there, the door

11 just came down immediately -- in

12 immediately. I don't think I said

13 anything.

14 Q. How many seconds after you closed the

15 door did the police open it?

16 A. Two, three.

17 Q. And how far into the house were you, when

18 they opened it?

19 A. Three or four feet.

20 Q. And did George say anything to you, when

21 you came into the house?

22 A. No, not that I can remember.

23 Q. Then what happened after the police came

24 in?

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1 A. I just remember three guys on top of me

2 putting me to the ground, and banging my

3 head on the floor, because my glasses

4 smashed.

5 Q. Did the three police take you down at the

6 same time, or did one take you down, and

7 the other two then try to control you?

8 A. I don't know, but it all happened so

9 quick. I just remember I had a knee

10 on me, and a foot on me, and somebody

11 grabbing my hands.

12 Q. What was your intention in running into

13 the house? What were you hoping to do?

14 A. I was just afraid. I didn't know why

15 they were breaking my window.

16 Q. Would you say you were kind of panicking?

17 A. Totally. I was scared to death.

18 Q. Did the police say anything to you after

19 they tackled you?

20 A. Yeah. They said I was under arrest.

21 Q. Did you notice which officer said that

22 to you?

23 A. No.

24 Q. What happened after that?

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1 A. They told me something about getting my

2 hands out. They needed my hands to put

3 the cuffs on, something like that, and

4 make sure it was pulled up over my

5 breast. I was on top of my hands, when I

6 got put down. One of them had their knee

7 in my back. I couldn't get my hands

8 out. I remember yelling to George,

9 saying, George, pull my shirt down, pull

10 my shirt down.

11 Q. So, you were lying on your chest on the

12 floor.

13 A. Yes.

14 Q. What did George say to you, if anything,

15 after you said help me with that?

16 A. I didn't hear him say anything. I was

17 wondering why he didn't.

18 Q. What happened after the police told you

19 that they needed to handcuff you?

20 A. I kept saying, Pull my shirt down, pull

21 my shirt down. That's all I can

22 remember.

23 Q. And did you see Officer Rick Somers come

24 into the house?

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1 A. No, I didn't notice.

2 Q. Did you see him inside the house?

3 A. No.

4 Q. Did you hear him say anything to

5 Stoddard?

6 A. No.

7 Q. Did you hear George say anything to him?

8 A. No.

9 Q. So, at some point the officers handcuffed

10 you.

11 A. Yes.

12 Q. How did that happen? Were you finally

13 able to get your hands free and put them

14 behind your back?

15 A. Yes. I don't know how.

16 Q. And they helped you stand up at that

17 point?

18 A. Yes.

19 Q. What happened after that?

20 A. I remember one of the cops going

21 Woo, because my shirt was up. I can't

22 remember how it got down again, but

23 somebody pulled it down.

24 Q. You don't remember who that was?

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1 A. No.
 2 Q. Did they take you out of the house after
 3 that?
 4 A. Yes.
 5 Q. And did you say anything to George
 6 between the time that you got up and
 7 the time that you were taken out of
 8 the house?
 9 A. I don't think so. George just said,
 10 Go easy, Kelly. It will be all right,
 11 something like that.
 12 Q. Did you say anything to him?
 13 A. I don't think so. I think I was just
 14 crying.
 15 Q. And did the police put you into one of
 16 the cruisers?
 17 A. Yes.
 18 Q. Into the back seat of it?
 19 A. Yes.
 20 Q. How long were you sitting in the back
 21 seat of the cruiser before they drove off
 22 to take you to the station?
 23 A. Well, they had to keep adjusting my
 24 handcuffs, because it was cutting off the

1 Q. Did you notice anyone else who was around
 2 speaking with him?
 3 A. No.
 4 Q. While you were being driven to the
 5 station, did you have any further
 6 conversation with any of the police?
 7 A. I can't remember.
 8 Q. Did they tell you that they thought that
 9 you had hit one of the officers, when you
 10 were moving your truck?
 11 A. I can't remember.
 12 Q. But at some point you became aware that
 13 they believed that you had hit one of the
 14 officers?
 15 A. Yes.
 16 Q. When was that that you were told that?
 17 A. I think when they told me the charges, I
 18 guess that I was -- it was like five
 19 things that they arrested me for.
 20 Q. So, was that in an arraignment before a
 21 judge?
 22 A. I think so.
 23 Q. When was that? Was that the same day?
 24 A. It was probably the next day.

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1 circulation pretty much after that. They
 2 told me it was all right, but I said, No,
 3 my fingers are getting numb. They said,
 4 It's loose enough and shut the door. I
 5 think we drove off.
 6 Q. So, the police were standing outside, and
 7 you were sitting in the back seat, when
 8 you were trying to have your handcuffs
 9 adjusted?
 10 A. I can't remember.
 11 Q. Did any of the police sit in the back
 12 with you?
 13 A. I don't think so, but I can't remember.
 14 Q. About how long was it between the time
 15 they first put you into the car and
 16 when they drove off with you?
 17 A. I don't remember.
 18 Q. Thirty seconds, a minute, two minutes?
 19 A. I'd say within a minute, but I don't
 20 remember. I was like pretty hysterical.
 21 I was really upset.
 22 Q. Did you see where George was while you
 23 were sitting in the back of the car?
 24 A. No.

1 Q. Had Stoddard bailed you out before you
 2 had your arraignment?
 3 A. Yes.
 4 Q. How long after you were taken to the
 5 station did he bail you out?
 6 A. He brought the money to the police
 7 station right away almost, I guess. I
 8 was in there probably for an hour or
 9 two. I can't remember how long.
 10 Q. So, you weren't told what the charges
 11 against you were before you were bailed
 12 out?
 13 A. I think I was told. I just don't
 14 remember who told me.
 15 Q. What did they tell you, as best you can
 16 remember, what the charges were?
 17 A. Well, I know what the charges were, but
 18 I don't remember what they told me. It
 19 was probably the same thing. I just
 20 don't remember.
 21 Q. Do you remember being told that one of
 22 the charges was assault and battery?
 23 A. Yes.
 24 Q. And did they tell you what the reason was

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Page 43

1 that they were going to charge you with
 2 assault and battery?
 3 A. That I tried to run over a police
 4 officer.
 5 Q. So, they told you that after you were
 6 taken to the station.
 7 A. I think so.
 8 Q. How did you respond, if at all, when you
 9 were told what the charges against you
 10 were?
 11 A. I didn't know what they meant.
 12 Q. Do you remember having any further
 13 conversations with any of the police
 14 officers in the station?
 15 A. I really don't. It's a blur.
 16 Q. And is it fair to say that you were
 17 waiting for George to come; so you could
 18 figure out what was going on?
 19 A. No, I wasn't really thinking of that.
 20 Q. What happened after George came and
 21 bailed you out?
 22 A. We went to Honey Dew Donuts. His friend
 23 Ray was there, and they were having a
 24 coffee, and I just sat with them.

1 A. He said that Somers threw him to the
 2 ground or something like that. I said,
 3 Why?
 4 Q. And did you know Somers?
 5 A. No.
 6 Q. Had George ever mentioned being
 7 acquainted with him?
 8 A. Yes.
 9 Q. So, you knew of him by name.
 10 A. Yeah, I did. George always had favorable
 11 things to say about him.
 12 Q. Is he someone you would have recognized?
 13 A. No, not really.
 14 Q. He's a neighbor of yours in the same
 15 street, is that right?
 16 A. Yes.
 17 Q. What else did George say to you, when
 18 you were talking about the incident?
 19 A. About him or me?
 20 Q. Whatever you remember.
 21 A. I don't remember. I was just so stunned
 22 about everything that happened. I just
 23 don't remember.
 24 Q. Do you remember saying anything to him?

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1 Q. What was George's appearance like,
 2 when he came and bailed you out?
 3 A. He had a cut on his chin.
 4 Q. And what part of the chin was it, if
 5 you could just describe verbally, as
 6 closely as you can, since we can't have
 7 a pointing described on the transcript?
 8 A. Under his lip down by the point on his
 9 chin, kind of in the middle, I guess. I
 10 don't know. I remember seeing it, but I
 11 don't remember like exactly where it was
 12 between his lip and his chin. It was
 13 probably three quarters of an inch long,
 14 if that tells you anything.
 15 Q. Was it bleeding?
 16 A. Yeah.
 17 Q. How much was it bleeding?
 18 A. I don't really know. He just like wiped
 19 it every once in a while.
 20 Q. And when you were sitting in Honey Dew
 21 Donuts, did you discuss with George what
 22 had just happened?
 23 A. I asked him what happened to his chin.
 24 Q. And what did he say?

1 A. To George?
 2 Q. Yes.
 3 A. Well, I asked him about the cut. I
 4 pretty much didn't want to talk. You
 5 know, I was so upset. I said, Let's get
 6 out of here. He wanted to be there and
 7 have his coffee and relax, but I was so
 8 embarrassed and everything about what
 9 happened.
 10 Q. Did you go back home at some point later
 11 that day?
 12 A. Yeah, right away, uh-huh.
 13 Q. Did you look back at your truck, when you
 14 arrived back home?
 15 A. Yes.
 16 Q. Did you notice anything about it that was
 17 different?
 18 A. Well, there was glass everywhere.
 19 Q. Did you notice anything about the side
 20 view mirrors?
 21 A. I think one on the driver's door was
 22 pushed in.
 23 Q. You say "pushed in"?
 24 A. It's one of those ones if you touch it,

STODDARD V. SOMERS

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1 it goes in, and you pull it out, like
 2 when you go through a car wash, stuff
 3 like that. It's just one of those ones
 4 that is meant to move.
 5 Q. So, had it been moved closer or farther
 6 away from the door?
 7 A. I think it was next to the door from
 8 what I can remember, but it didn't seem
 9 important to me; so I didn't pay much
 10 attention.
 11 Q. Now, eventually you went on trial for the
 12 charges that had been brought against
 13 you?
 14 A. Yes.
 15 Q. When was that?
 16 A. I probably, at least, ten times went to
 17 court. I probably went to trial, I can't
 18 even remember, January.
 19 Q. What were the results of your trial?
 20 A. I was found guilty of criminal trespass
 21 and resisting arrest.
 22 Q. And you were acquitted on the other
 23 charges.
 24 A. Yes.

1 A. A few months ago anyway.
 2 Q. Have you been arrested in connection with
 3 any dispute involving Rubbo and Stoddard
 4 since April 21st?
 5 A. No.
 6 Q. Has Mr. Rubbo been arrested in any of
 7 these incidents since then?
 8 A. Not that I know of.
 9 (Off the record.)
 10 (Back on the record.)
 11 MR. CARLSON: I don't think I
 12 have anything more. Now, if Mr. Sharp
 13 has questions for you, it's possible I'll
 14 have something else.
 15 MR. SHARP: No, I don't.
 16 MR. CARLSON: I guess we're
 17 done.
 18 (Whereupon deposition concluded
 19 at 11:02 a.m.)
 20
 21
 22
 23
 24

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1 Q. Which three charges were those?
 2 A. Assault and battery with a dangerous
 3 weapon, assault and battery with a
 4 dangerous weapon against a police
 5 officer, I think, and I forget the
 6 third one.
 7 Q. Did you file an appeal from the two
 8 charges that you were convicted on?
 9 A. Yes.
 10 Q. And has that appeal been decided?
 11 A. No.
 12 Q. What is the current status of the appeal?
 13 A. The lawyer, she has everything, and she
 14 is pretty much handling it.
 15 Q. Do you know if there has been any oral
 16 argument on your appeal?
 17 A. I don't think so as of yet.
 18 Q. Do you know if a brief has been filed for
 19 you?
 20 A. What does that mean?
 21 Q. A written submission that a lawyer writes
 22 in support of your appeal.
 23 A. Yes, that has been done.
 24 Q. Do you know when that was filed?

1 ERRATA SHEET
 2 CHANGES TO THE DEPOSITION OF:
 3
 4 INSTRUCTIONS TO WITNESS: 1) Please note
 5 any desired corrections to your testimony
 6 by page and line number. 2) Enter text
 7 as it appears in the transcript. 3)
 8 Enter text as it should appear.
 9

10 PAGE LINE SUGGESTED CORRECTION
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STODDARD V. SOMERS

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SIGNATURE PAGE

I, _____, do
hereby certify that I have read the
foregoing transcript of my testimony, and
further certify that said transcript is a
true and accurate record of said
testimony.

Dated at _____, this
day of _____, 2003

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COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

I, JUDITH R. SIDEL, a Registered
Professional Reporter and Notary Public,
in and for the Commonwealth of Massachusetts,
do hereby certify that:

DEBORAH ANN KELLY, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true and accurate record
to the best of my knowledge, skills and
ability, of the testimony given by such
witness.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed my
Notarial Seal this 12th day of August
2004.

JUDITH R. SIDEL

NOTARY PUBLIC

Commission expires:
June 5, 2009.

EXHIBIT C

Page 1

Volume: 1
Pages: 1 to 62
Exhibits: See Index

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. No. 03 10461 DPW

GEORGE STODDARD,)
Plaintiff)

vs.)

RICHARD SOMERS, in his personal)
and official capacity, and)
THE TOWN OF ROCKLAND,)
MASSACHUSETTS,)
Defendant)

DEPOSITION of RICHARD SOMERS,
a witness called on behalf of the
Plaintiff, pursuant to the applicable
provisions of the Federal Rules of
Civil Procedure, before Judith R. Sidel,
Professional Court Reporter and Notary
Public, in and for the Commonwealth of
Massachusetts, at the Office of Pierce,
Davis, Perritano, LLP, 10 Winthrop
Square, Boston, Massachusetts 02110-1257,
on Tuesday, July 6, 2004, commencing at
2:00 p.m.

APPEARANCES: (Continued on page 2)

* * * *
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35 Tudor Road
Needham, Massachusetts 02492

Page 2

APPEARANCES (Continued):

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On behalf of the Plaintiff

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On behalf of the Defendant

Page 3

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

Richard Somers
(By Mr. Sharp) 4

E X H I B I T S

NO.	DESCRIPTION	PAGE
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S T I P U L A T I O N S

It is hereby stipulated and
agreed by and between counsel for the
respective parties that the deposition
will be read and signed under the pains
and penalties of perjury. It is also
stipulated that the notarization will be
waived.

Failure to sign transcript
within thirty (30) days will deem the
signature waived.

It is further stipulated and
agreed that all objections, except as to
form, and motions to strike are reserved
until the time of trial.

* * *

RICHARD SOMERS, a witness
called by counsel for the Plaintiff, upon
production of police badge, being first
duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. SHARP:

Q. It's Sergeant Somers?

Page 5

Page 7

1 A. No, officer.
 2 Q. Officer Somers, then, have you had your
 3 deposition taken at any time before?
 4 A. Yes, I have.
 5 Q. Do you know how many times?
 6 A. Once.
 7 Q. And what kind of case was that?
 8 A. It was Sergeant Shallies of the Rockland
 9 Police. I was called as a witness.
 10 Q. So, you have never been a defendant in a
 11 civil action.
 12 A. No.
 13 Q. Have you ever been a defendant in a
 14 criminal action?
 15 A. No.
 16 Q. I don't ever want you to tell me anything
 17 that you've discussed with Mr. Carlson,
 18 but did you have a chance to just
 19 generally familiarize yourself with
 20 what's going to go on at the deposition
 21 today?
 22 A. Yes, he told me that you would ask me
 23 questions, and that he would have an
 24 opportunity to ask questions.

1 permanent part-time civil service
 2 appointed.
 3 Q. And since 1984 what has been your
 4 position with the Rockland Police
 5 Department?
 6 A. Patrolman.
 7 Q. Aren't you the police prosecutor now for
 8 Rockland?
 9 A. Currently I'm assigned to the Hingham
 10 District Court, police prosecutor.
 11 Q. When did that start?
 12 A. Last year, about a year ago.
 13 Q. And you know we're here about the April
 14 21 -- what was it 2000, 2001 entry of
 15 George Stoddard's house, right?
 16 MR. CARLSON: 2002.
 17 Q. Sunday, April 21, 2002.
 18 A. That's correct.
 19 Q. What's the first time you can recall
 20 being aware that there was any kind
 21 of dispute going on between Rubbo
 22 and Stoddard over their property?
 23 A. For a while.
 24 Q. I mean, do you think it was like four

Page 6

Page 8

1 Q. And one of the things we have to avoid is
 2 talking at the same time. A lot of the
 3 time you will know the question that I'm
 4 going to ask you before I finish it,
 5 but be patient; otherwise, it makes it
 6 difficult for the court reporter. If you
 7 want to take a break at any time, just
 8 say so, no problem. I don't think we're
 9 going to be all that long. If you want
 10 to take a break, just let me know.
 11 Some of the time you probably
 12 won't understand my question, either
 13 because I've been vague or, you know,
 14 just screwed up the question. If so,
 15 just let me know, and I will rephrase
 16 it and try to make it clear.
 17 A. Thank you.
 18 Q. When were you first hired by the Rockland
 19 Police Department?
 20 A. Full-time I was hired in 1984. Before
 21 that I was an intermittent police officer
 22 for nine and a half years.
 23 Q. What does it mean to be an intermittent?
 24 A. Your permanent intermittent means your

1 years before 2002 or four months? Do you
 2 have anyway to quantify it?
 3 A. No, I don't.
 4 Q. But you knew for at least, what, at least
 5 a few months before?
 6 A. Oh, absolutely.
 7 Q. And how did you first become aware that
 8 there was a dispute between Rubbo and
 9 Stoddard?
 10 A. The police department had numerous calls
 11 there about the dispute.
 12 Q. Do you think that's how you first became
 13 aware?
 14 A. I don't know whether Rubbo told me,
 15 or Stoddard told me, or whatever.
 16 Q. Now, how far away from Rubbo's house do
 17 you live?
 18 A. As the crow flies, probably 75 yards.
 19 Q. What's your address then?
 20 A. 28.
 21 Q. Rubbo is, I think, 43 and Stoddard is
 22 51.
 23 A. Yeah.
 24 Q. So, you live on the opposite side of the

Page 9

1 street?

2 A. That's correct.

3 Q. And before April 21st, 2002, did you

4 ever have a conversation with Rubbo about

5 this property dispute between him and

6 Stoddard?

7 A. He mentioned it, yes.

8 Q. What do you recall him mentioning?

9 A. I don't really get involved, because

10 they're neighbors; so I try not to

11 get involved. I told them, if there's

12 a dispute, get the land surveyed. I

13 told them both that. That's the simplest

14 explanation to that whole problem.

15 Somebody get it surveyed.

16 Q. But do you remember what Rubbo said to

17 you about it?

18 A. No. I just knew there was a problem. I

19 couldn't go back that far and tell you.

20 Q. And your advice to both of them, you say,

21 was to get the land surveyed.

22 A. Correct.

23 Q. Now, you became aware of numerous

24 reports, numerous calls from both of them

Page 10

1 to the Rockland Police Department, right?

2 A. That's correct.

3 Q. And I'd like to show you a batch of

4 documents called Rockland Police

5 Department dispatch logs.

6 MR. SHARP: I think we'll make

7 them all as Exhibit No. 1.

8 (Plaintiff's Exhibit No. 1.)

9 Police Logs, marked for identification.)

10 Q. You're certainly welcome to peruse them,

11 if you want to. I don't really want to

12 ask you questions about specific ones.

13 I wonder if you can just tell me if you

14 recognize what those documents that

15 comprise Exhibit 1, what are they?

16 A. It would be a police log from various

17 dates.

18 Q. And is that police log something that's

19 kept in the ordinary course of the

20 Rockland Police Department business?

21 A. Absolutely.

22 Q. And could you tell us just generally how

23 are those police logs made up? Somebody

24 makes a phone call and then what happens?

Page 11

1 A. The desk officer would type the incident,

2 the time of the incident, what unit

3 responded. This one here is June 13,

4 2001. Officer responded would be Mike

5 Brady. He was in unit M2, which is a

6 motorcycle. The time he was dispatched

7 was 5:04 p.m. He must have been even

8 in the area. He got there at 5:04 p.m.

9 He cleared at 6:31 p.m., then would give

10 a brief description of the incident.

11 Q. So, there is an operator who would --

12 A. A police dispatcher.

13 Q. A police dispatcher would get the call.

14 Would the police dispatcher be making up

15 the beginning of that radio log as the

16 person is making the phone call?

17 A. No.

18 Q. When would the dispatcher actually make

19 out the report?

20 A. Probably after he hangs up the phone,

21 because you have to type it into the

22 computer.

23 Q. So, quickly after receiving the

24 information, the dispatcher would enter

Page 12

1 the information.

2 A. Usually, unless it was real busy, then he

3 would write -- say if the call came in

4 and it was real busy, he would write it

5 down on a piece of paper.

6 Q. Might handwritten and later transpose it?

7 A. Correct.

8 Q. So, anyway, the initial information

9 about the call coming in and an officer

10 responding would take place within

11 minutes --

12 A. That's correct.

13 Q. -- of the call, is that correct?

14 A. Yes, that's correct.

15 Q. And then later on apparently, correct me

16 if I'm wrong, there's a report that comes

17 to the dispatcher from the officer about

18 what happened?

19 A. Correct.

20 Q. And is it the same thing? The dispatcher

21 would either type that out after talking

22 to the officer or write it down, then

23 transpose?

24 A. That's correct.

Page 13

1 Q. So, all of this information that's on
2 the police log is generated a couple
3 of minutes after the dispatcher gets
4 that information, is that right?
5 A. It should be. That's correct.
6 Q. And that would be the ordinary course
7 of business?
8 A. That's correct.
9 Q. And then these police logs, how are they
10 retained? Are they in a computer system?
11 A. It's in the computer. Also it's printed
12 out in a book.
13 Q. And if you could just briefly go through
14 those again, not reading the whole thing,
15 but is there any reason to believe that
16 any of those dispatches were made --
17 those logs were made in a manner, other
18 than what you've just described?
19 A. So far, no. That's the way it would
20 work. That one took a while; so they
21 might have been busy on the arrival.
22 Q. Which one are you talking about? Why
23 don't we just --
24 A. October 20th.

Page 14

1 Q. October 20th?
2 A. Of 2001.
3 Q. Why might that be unusual?
4 A. If they were busy at the time, the
5 dispatcher might not have put it in
6 on time.
7 Q. Might not have typed it, but would
8 have written it out, right?
9 A. Right, and then it appears that he
10 just -- he did after. If they were busy,
11 he put the arrival time almost one hour
12 later. I don't know what happened that
13 day. Basically that's the way they're
14 all working. You want that in there with
15 that?
16 Q. Sure.
17 A. Okay. This would not be part of the
18 log. This came out of the trespass
19 order.
20 Q. It's labeled Notice To Trespass at the
21 top.
22 A. Yeah. So far they're all filled out
23 correctly.
24 Q. And so, is it fair to say that with the

Page 15

1 exception of the notice to trespass page
2 and that one where there was an hour
3 lapse between the time of the call and
4 the time of the entry, that those police
5 dispatch logs were all made out in
6 accordance with what you described
7 earlier?
8 A. That's correct.
9 Q. And do the dispatchers have a duty to
10 be accurate, when they make those out?
11 A. Yes.
12 Q. And those are kept in the ordinary course
13 of business of the Rockland Police
14 Department?
15 A. Yes.
16 Q. And have you had on occasion to make
17 any of those police dispatch logs out
18 yourself at any time?
19 A. I've dispatched, yes.
20 Q. Is that pretty much the way you did them?
21 A. Yes, that's correct.
22 Q. When was that? Was that before you were
23 a full-time officer?
24 A. And during.

Page 16

1 Q. Now, you would agree with me that there
2 have been a lot of calls from Rubbo and
3 Stoddard.
4 A. That's correct.
5 Q. By the time April 21st, 2002 came along,
6 was there a sort of attitude among the
7 officers in terms of responding to
8 Stoddard and Rubbo calls?
9 MR. CARLSON: Objection. You
10 can answer.
11 A. No, we just have to go.
12 Q. But wasn't there a sort of rolling of the
13 eyes and, Oh, no, here we go again, when
14 you had to go to respond to these guys?
15 MR. CARLSON: Objection. You
16 can always answer, unless I tell you not
17 to answer.
18 A. No.
19 Q. Was Rubbo and Stoddard situation a little
20 bit unusual, or do you have a lot of
21 feuding neighbors in Rockland?
22 A. As of lately they're probably the most
23 frequent.
24 Q. When is the first time, just focusing on

Page 17

Page 19

1 April 21st now, when is the first time
2 that you became aware that there was a
3 dispute of some sort going on that day?
4 A. I believe my wife said, The cruisers are
5 down the street.
6 Q. And was it after your wife told you that
7 the cruisers were down the street that
8 you went over there?
9 A. I didn't go over until she said that
10 Officer Donnelly had been struck by a
11 pickup truck.
12 Q. Why don't we go kind of step-by-step. Do
13 you recall approximately what time of day
14 it was that you first became aware that
15 there were cruisers down there?
16 A. No. I was outside.
17 Q. If Myers says that he arrived at 1:56
18 p.m., does that do anything to refresh
19 your recollection?
20 A. I know it was during the day shift around
21 lunchtime. I'm not sure.
22 Q. So, two o'clock, give or take a little?
23 A. Okay.
24 Q. So, your wife told you there are cruisers

1 Q. The black pickup?
2 A. The black pickup truck, that's correct.
3 He was facing down the street away from
4 my house. He was telling the driver,
5 Deborah Kelly, to get out of the truck.
6 That she was under arrest.
7 Q. And then what happened?
8 A. She didn't respond. He told her to get
9 out, or he would break the window. He
10 broke the window. As a matter of fact, I
11 told him to break the window. She would
12 not get out of the car, and she just
13 struck him with the truck. I said, Break
14 the window. He broke the window. She
15 exited the vehicle on the passenger
16 side. He reached in to unlock it, put
17 his hand right like this. The lock is
18 right there. He put his hand in to
19 unlock it, and she scooted out the
20 passenger side.
21 Q. Now, why did you tell Donnelly to break
22 the window?
23 A. He said he was struck by the car. She is
24 under arrest. That's assault and battery

Page 18

Page 20

1 down there. What did she say, the
2 cruisers are down at Rubbo's?
3 A. She just said the cruisers are down the
4 street.
5 Q. So, then what did you do?
6 A. I kept working in the yard.
7 Q. What is it that you were doing?
8 A. I think I was working around the back
9 of the house by where I keep the grill.
10 Q. So, then what happened next?
11 A. She yelled at me that Paul needs help.
12 He was just hit -- struck by a truck,
13 pickup truck. She said, Paul needs
14 help. She screamed it out.
15 Q. That's referring to Donnelly?
16 A. Paul Donnelly, yes.
17 Q. So, then what happened?
18 A. I ran down the street.
19 Q. Actually ran?
20 A. Ran to Stoddard's house.
21 Q. And what did you first see, when you got
22 to Stoddard's house?
23 A. Officer Donnelly was standing next to the
24 pickup truck.

1 with a dangerous weapon. He was yelling
2 to her she was under arrest.
3 Q. Were you a superior officer of Donnelly's
4 at that time?
5 A. Yes, I would be.
6 Q. So, when you told him to break the
7 window, were you acting as a superior
8 officer in telling him what to do?
9 A. I would have, yeah. That's correct, but
10 he was also already going to break it.
11 I told him to break it. She just struck
12 him with the truck.
13 Q. Then she scooted out the truck up the
14 stairs through the door, is that right?
15 A. Correct.
16 Q. So, let's put Deborah Kelly just -- did
17 she have to open the door, do you recall?
18 A. I don't, sir.
19 Q. Let's put Kelly at the threshold of the
20 door. Where are you at that moment?
21 A. Behind Officer Donnelly.
22 Q. And still right around the pickup truck?
23 A. If she's in the house, we were entering
24 the house.

Page 21

1 Q. So, you're hot on her heels then.
 2 A. Correct.
 3 Q. And who's the first officer into the
 4 house?
 5 A. Donnelly.
 6 Q. Are you the second officer into the
 7 house?
 8 A. Correct.
 9 Q. And who's third and who's fourth, if you
 10 recall?
 11 A. I'm not sure where Byers came in. I
 12 think, I'm not 100 percent, Sergeant
 13 Jackson was right behind me.
 14 Q. So, you think Jackson was third in?
 15 A. I'm not exactly sure. Everybody was
 16 tight together. I'm not sure.
 17 Q. Is it fair to say that you, Donnelly,
 18 Byers and Jackson all entered the door
 19 within a few seconds of each other?
 20 A. That's correct.
 21 Q. And did you yourself kick the door, or
 22 did you observe anyone kicking the door?
 23 A. No.
 24 Q. So, as far as you can recall, was the

Page 22

1 door open, when you and Donnelly first
 2 got there?
 3 A. As far as when I'm going into the home,
 4 the both of us?
 5 Q. Were going into the house.
 6 A. I don't know whether it was partially
 7 ajar or all the way closed.
 8 Q. And do you recall whether it opens into
 9 the house or out of the house?
 10 A. In.
 11 Q. So, when you first passed the threshold
 12 of the door, what do you see?
 13 A. Officer Donnelly grabbed Deborah Kelly.
 14 Stoddard took a step or two towards
 15 Officer Donnelly.
 16 Q. And where is Stoddard?
 17 A. To my left.
 18 Q. To your left as you're entering?
 19 A. Like I'm facing now, it would be to my
 20 left.
 21 Q. How far would you say Stoddard was from
 22 the door?
 23 A. I'm trying to remember the layout of the
 24 house. It's very small, not far, very

Page 23

1 close, six, seven feet, between six and
 2 eight feet.
 3 Q. Six and eight feet from the door?
 4 A. From myself, then he step towards
 5 Donnelly, closer to Donnelly.
 6 Q. And Donnelly is on your left?
 7 A. He's on my right.
 8 Q. He's on your right grabbing Kelly.
 9 A. Just a little to my right.
 10 Q. And --
 11 A. One o'clock, two o'clock, at that angle.
 12 Q. And before you saw Stoddard, what is it
 13 that you were doing?
 14 A. Following Donnelly in the house.
 15 Q. And then you see Stoddard?
 16 A. Correct.
 17 Q. And then what happens next?
 18 A. He stepped toward Officer Donnelly.
 19 For officer safety I pushed him away.
 20 Q. Now, is there any way to characterize
 21 the way that Stoddard stepped toward
 22 Donnelly? I mean, did he seem to be in
 23 a fighting stance, or just taking a step
 24 forward? Is it possible to describe

Page 24

1 that?
 2 A. No. He just took a couple of steps
 3 towards Donnelly. I felt he was a threat
 4 towards Officer Donnelly at that time.
 5 Q. But he didn't, like, have fists or
 6 anything in his hands, did he?
 7 A. I don't recall.
 8 Q. Do you recall whether he had anything
 9 in his hands?
 10 A. He did not.
 11 Q. So, you stepped towards Stoddard.
 12 A. Correct.
 13 Q. What did you do?
 14 A. I pushed him away.
 15 Q. Did your hands make contact with his
 16 body?
 17 A. Yes, they did.
 18 Q. And then what happened?
 19 A. He went into a chair. I just swore at
 20 him. I yelled at him. He stayed there
 21 in the chair, and I just stood like
 22 probably this far away, three to four
 23 feet away from him.
 24 Q. When you say he went into the chair?

Page 25

Page 27

1 A. A chair, or hassock, or something, I
 2 can't recall exactly what it was, but
 3 he was sitting down.
 4 Q. When you say he went into the chair, do
 5 you mean he went flying into the chair or
 6 he just sat down?
 7 A. I just pushed him, and he ended up in the
 8 chair.
 9 Q. And so --
 10 A. Whether he tripped over something or
 11 not, I don't know. There was clutter
 12 everywhere. I mean, there was clutter
 13 everywhere in the whole house.
 14 Q. But at least some of his momentum toward
 15 the chair was supplied by you then,
 16 right?
 17 A. I pushed him with enough force to stop
 18 his forward motion to go after Officer
 19 Donnelly, to stop his forward progress.
 20 Q. Was that also enough force to throw
 21 him -- to propel him, for lack of a
 22 better word, into the chair?
 23 MR. CARLSON: Objection.
 24 A. I don't know. He's a lot smaller than

1 attention to Stoddard?
 2 A. I looked that one time, when I heard
 3 Sergeant Jackson say, Don't bite me.
 4 When he stood up, I refocused everything
 5 onto Stoddard, because I didn't know if
 6 he would get up again.
 7 Q. But you said when you told him to stay
 8 down there, he did.
 9 A. Right, and then two of us just -- I faced
 10 him. He faced me.
 11 Q. What else did you hear of conversation or
 12 yelling back and forth between Kelly and
 13 the officers?
 14 A. She was just screaming so loud. I could
 15 hear Sergeant Jackson. I could hear them
 16 saying, Give me your arm or something to
 17 that effect. I don't recall too much
 18 more, just a lot of people yelling.
 19 Q. Do you recall her saying anything about
 20 her shirt?
 21 A. No, I don't.
 22 Q. Do you recall hearing sort of a whooping
 23 sound?
 24 A. When it was all over, Officer Donnelly

Page 26

Page 28

1 I am, probably 100 pounds lighter; so I
 2 just pushed to get him away from Officer
 3 Donnelly.
 4 Q. Now, I'll just note that when you
 5 say "pushed", you're putting up both
 6 of your hands?
 7 A. Two hands to the upper chest area.
 8 Q. Did you have anything in your hand
 9 at the time?
 10 A. No, I did not.
 11 Q. So, he's sitting in the chair or the
 12 hassock, whatever it is, and you're
 13 standing three or four feet away. Then
 14 what happened?
 15 A. I heard all the yelling and screaming
 16 behind me, and I heard Sergeant Jackson
 17 say, Don't bite me. At that time I
 18 turned and looked. Stoddard started
 19 getting up. I said, Just stay there.
 20 He sat back down. The two of us stayed
 21 right where we were until she was in
 22 custody.
 23 Q. Now, did you see Deborah Kelly come
 24 up off the floor, or were you paying

1 did say that, but it was probably pooped.
 2 Q. So, what happened after Kelly is off the
 3 floor in custody?
 4 A. They took her out of the house, and Mr.
 5 Stoddard and myself just walked out of
 6 the house. We stood there and talked for
 7 a few minutes. He talked to the sergeant
 8 for a few minutes and I went home.
 9 Q. And what did you and Stoddard say?
 10 A. I told Rubbo that you better not be
 11 touching their property, because you
 12 could be videoed, as I walked passed him.
 13 Q. What made you think that Rubbo might be
 14 videoed?
 15 A. Mr. Stoddard told me that we were being
 16 videoed, when he was in the chair.
 17 Q. When he was in the chair after he first
 18 sat in the chair?
 19 A. While all that was going on, him and I
 20 were just talking just like we are now.
 21 He said, You're probably being videoed.
 22 So, I looked around the room and said,
 23 Where's the video? He didn't answer me.
 24 After I said, Where's the video, he

Page 29

1 didn't answer me.

2 Q. This discussion about the video is while

3 he's sitting in the chair?

4 A. That's correct.

5 Q. And is it before the time you said

6 he started to get out of the chair?

7 A. It would have been after. Everything

8 happened --

9 Q. I understand. We are splitting hairs

10 here, because it's a short period of

11 time.

12 A. Right.

13 Q. The best you recall is he's in the chair,

14 then he gets up. You tell him sit back

15 down. He sits back down. And sometime

16 after that he tells you you're being

17 videoed, or he said something about

18 that.

19 A. I would say that's how it would go.

20 Q. Did you have any conversations with any

21 of the officers about this arrest after

22 the arrest, say, within a month after the

23 arrest?

24 A. I'm trying to think. I'm not sure on

Page 30

1 that time frame or not.

2 Q. So, then let me just expand it, and ask

3 if you had any conversations with any

4 officers about this arrest afterward?

5 MR. CARLSON: I just want

6 to point out, don't describe any

7 conversation in which I was involved.

8 A. Basically when counsel was there.

9 Q. So, you can't recall any conversations

10 with Donnelly, Byers or Jackson

11 concerning this April 21st arrest --

12 since the April 21st arrest, is that

13 correct?

14 A. I'm not sure of the time frame, but I

15 remember Sergeant Jackson saying she was

16 trying to bite him, but I'm not sure

17 where that time frame was.

18 Q. What about any conversations with

19 superior officers after April 21st, 2000?

20 A. Sergeant Jackson is my superior officer.

21 Q. Other than Jackson, did you have any

22 conversation?

23 A. I don't believe so.

24 Q. Was there ever any IAD initiated about

Page 31

1 the April 21st event?

2 A. There was no report of any incident at

3 all.

4 Q. Did you ever have a discussion of the

5 April 21st arrest with Louis Rubbo?

6 A. I tried to avoid Mr. Rubbo and Mr.

7 Stoddard, because they're neighbors.

8 Just on that day I told them to be

9 careful. You could be videoed.

10 Q. At any time have you had any kind of

11 social relationship with Rubbo beyond

12 just, you know, you say hello to your

13 neighbor?

14 A. No, I've never.

15 Q. Over the lawn mower?

16 A. No, I've never been to a social function

17 with him.

18 Q. Same with Stoddard?

19 A. Same with Stoddard.

20 Q. At the time of April 21st, 2002, was

21 there anything unusual going on in your

22 life?

23 A. As far as?

24 Q. Having any family problems.

Page 32

1 A. No.

2 Q. Was your wife having some difficulty,

3 maybe some medical difficulties around --

4 A. She's been ill for years.

5 Q. And I hate to have to ask you about that

6 stuff, and I know you're not a doctor.

7 What's your understanding of the problem

8 she was having on April 21st? I'm

9 focusing on that date right now.

10 A. She was fine. She was working out in the

11 yard with me.

12 Q. But she had some underlying medical

13 condition?

14 A. She had a cancer before.

15 Q. And had that been treated and resolved by

16 April 21st?

17 A. Yeah, she was in remission.

18 Q. Are you still married today?

19 A. She's deceased.

20 Q. When did she pass on?

21 A. Two years ago this month.

22 Q. So, that would have been in June of 2000?

23 A. July 16th.

24 Q. July 16, 2002. And did she die of

1 cancer?
 2 A. No.
 3 Q. What was the --
 4 A. She committed suicide.
 5 Q. I'm very sorry. Were there problems
 6 with her in that way having depression
 7 or mental anxiety?
 8 A. Wait a minute.
 9 THE WITNESS: Can I talk to
 10 you?
 11 MR. CARLSON: Finish the
 12 question. If we could limit this as much
 13 as possible.
 14 Q. But we also understand that people who
 15 are under this kind of duress, this kind
 16 of strain can act differently than they
 17 might ordinarily act.
 18 A. She was fine on that date.
 19 Q. On that day, but around that time was she
 20 having depression or some mental problem?
 21 A. Depression.
 22 MR. SHARP: If you want to have
 23 a talk, go ahead. Let's go off the
 24 record.

1 (Off the record.)
 2 (Back on the record.)
 3 Q. I don't want to go on about this longer
 4 than I have to. I hope you understand I
 5 have a job to do and I'm just doing it.
 6 A. Okay.
 7 Q. Is it fair to say that during April of
 8 2002, your wife's health condition was
 9 causing you some distress?
 10 A. No more than usual -- the usual person.
 11 Q. But you were distressed by it?
 12 A. I don't know about then as much as other
 13 times, no.
 14 Q. Do you have children?
 15 A. Two.
 16 Q. How old were they at the time?
 17 A. 25 and 23.
 18 Q. And were they around the house at all?
 19 A. My son lived with us then. No, he
 20 didn't. It was between us and his
 21 girlfriend.
 22 Q. So, he was sometimes there?
 23 A. Sometimes there and sometimes not.
 24 Q. Could I ask your children's names?

1 A. My daughter is Amy and my son is Steven.
 2 Q. And Amy is the elder?
 3 A. She's the senior, yes.
 4 Q. Where does Amy reside now?
 5 A. Abington.
 6 Q. Do you know her address?
 7 A. Bedford Street. No, it's not Bedford --
 8 Washington Street. I think it's like
 9 68. It's in the low numbers.
 10 Q. And is it Amy Somers?
 11 A. Amy Somers Quelly.
 12 Q. How do you spell Quelly?
 13 A. Q-u-e-l-l-y.
 14 Q. So, she's like 27 now?
 15 A. She's 27 -- no, 28. She just had a
 16 birthday.
 17 Q. And what was your son's name?
 18 A. Steven with a V.
 19 Q. And Somers, I assume.
 20 A. That's correct.
 21 Q. Do you know his current address?
 22 A. 33 Wilson Street.
 23 Q. So, he's living with you now.
 24 A. No, he lives across the street. He

1 didn't want to leave home too far, I
 2 guess.
 3 Q. Do you know whether he, or do you know
 4 whether he, Steven, or Amy had any kind
 5 of relationship ever with Rubbo?
 6 A. Just to say hello as neighbors.
 7 Q. Just the guy that lives down the street?
 8 A. Just the guy that lives down the street.
 9 Q. Same for Stoddard?
 10 A. That's correct.
 11 Q. Were Amy or Steven expressing to you any
 12 great concern about their mother around
 13 the time of April 21st?
 14 A. I can't remember that, no.
 15 Q. At some point during the entry of the
 16 house on April 21st you told Stoddard,
 17 We're tired of your fuckin' shit, right?
 18 A. Either we're tired of your fuckin' shit
 19 or I'm tired. I don't know how I said
 20 it, one of those two.
 21 Q. What fuckin' shit were you talking about?
 22 A. Just going to the house all the time,
 23 having cruisers there all the time.
 24 Q. And you're not sure whether you said

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1 we're tired or I'm tired.
 2 A. That's correct.
 3 Q. How many times had you gone to the house
 4 in response to a police dispatch?
 5 A. Maybe once. I'm not sure. Like I said,
 6 I tried to stay away. As a matter of
 7 fact, the day that we were suppose to be
 8 in court, shortly before that, I worked
 9 a shift, my sector of town. I was
 10 suppose to respond. I asked another
 11 cruiser to go, just because it was my
 12 neighborhood. You try not to go to
 13 neighborhood calls.
 14 Q. Are you saying that was before April
 15 21st?
 16 A. Recently. We try not to go to -- like if
 17 you worked on the other side of town, it
 18 was your street you lived on, I would
 19 answer the call.
 20 Q. You got somebody to cover for you.
 21 A. Yeah.
 22 Q. So, if you had only been there once on
 23 a police dispatch, and you said, blank,
 24 tired of your fuckin' shit, does it

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1 make sense to you that you must have
 2 said, We're tired of your fuckin' shit?
 3 A. Again, I don't know whether I did or did
 4 not.
 5 Q. And assume for the moment that you said,
 6 We're tired, that would have been in
 7 reference to you and your police officer
 8 colleagues, wouldn't it?
 9 MR. CARLSON: Objection.
 10 A. That's an assumption.
 11 Q. Right. I understand.
 12 A. Yeah.
 13 Q. At depositions we get to ask questions
 14 like that.
 15 A. I don't know.
 16 Q. But the fuckin' shit that you were
 17 talking about was this constant calling
 18 back and forth on each other.
 19 A. Absolutely. The cruiser is always
 20 there. Live on a dead-end street with
 21 maybe ten or 12 houses on it.
 22 Q. So, how many times, just as a neighbor
 23 to Rubbo and Stoddard, how many times
 24 did you become aware that, Oh, Jesus,

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1 the cruisers are down the street again?
 2 A. Numerous. Everybody on the South Shore
 3 with a scanner knows we've been there
 4 numerous times.
 5 Q. Did that --
 6 A. A lot more than this pile.
 7 Q. So, a lot more police presence at those
 8 residences than is reflected in Exhibit
 9 No. 1, right?
 10 A. That's correct.
 11 Q. How would that happen that a cruiser
 12 would go there without having some type
 13 of a dispatch?
 14 A. Every time they dispatch, there would be
 15 a log. It's in the log. They have to be
 16 dispatched.
 17 Q. So, if I understand you correctly, are
 18 you telling me that there has to be a
 19 lot more dispatch logs than the pile that
 20 you've got sitting there in front of you
 21 as Exhibit 1?
 22 A. This doesn't seem like enough from --
 23 well, this doesn't come back to now.
 24 That's why.

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1 Q. It doesn't go back far enough, or it
 2 doesn't come forward?
 3 A. It doesn't come forward to the present.
 4 Q. So, between the time that the first
 5 cruisers started showing up and April 20,
 6 2002, does this seem like --
 7 A. I would have to go back in the log and
 8 look, to be truthful. I don't know
 9 exactly how many, but between then and
 10 now there is numerous pages of them.
 11 Q. Lots more police logs than this?
 12 A. Correct.
 13 MR. SHARP: Well, obviously I
 14 would like to have those.
 15 Q. Tell me about your use of force training
 16 with the Rockland Police. Is that annual
 17 in service?
 18 A. We have in service; that's correct.
 19 Q. When is the last time that you had a
 20 none in service use of force course
 21 or training of any sort?
 22 A. 2003.
 23 Q. And what about before April 21, 2002,
 24 when would have been your last training,

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1 other than an in service?
 2 A. The Police Academy.
 3 Q. And that was?
 4 A. 1984, I believe.
 5 Q. Before you became full-time?
 6 A. That's when I was in the Academy going
 7 full-time.
 8 Q. Is there a typical in-service training on
 9 use of force at the Rockland Police
 10 Department, or are they different every
 11 year?
 12 A. They're different.
 13 Q. Can you describe those in-service
 14 training courses?
 15 A. Basically the ones that Rockland would be
 16 shoot, don't shoot situation, basically.
 17 Q. What about non-shooting use of force,
 18 have you had any services?
 19 A. They would talk about it at that
 20 training.
 21 Q. And you understand the concept obviously
 22 of using escalating force in response to
 23 escalating threat to the officer, right?
 24 A. That's correct.

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1 Q. And how would you describe that yourself?
 2 A. As far as?
 3 Q. What is it? What is it that an officer
 4 is suppose to do?
 5 A. Your mere presence is the first step.
 6 Presence and verbal command would be the
 7 same.
 8 Q. And you would use that level of presence
 9 or force in response to what kind of
 10 situations?
 11 A. Just about every situation you go to
 12 would be your presence is there. They
 13 know you're a police officer.
 14 Q. And then what's the next level?
 15 A. Then would be -- hands on would be the
 16 next and they changed it. I'm not sure
 17 exactly where they changed it. OC would
 18 be the next, but I kind of think they're
 19 both the same now. They changed it back
 20 and forth a couple of times; so I'm not
 21 sure where the OC and tactical come in.
 22 There's escorts along with the hands-on.
 23 That would be the second step up the
 24 ladder. Then it would go tactical all

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1 the way up to deadly force.
 2 Q. What force situation did you perceive, as
 3 far as Stoddard is concerned, when you
 4 went into his house?
 5 A. He was going to interfere with Arthur
 6 Donnelly. So, for his safety, I pushed
 7 him out of the way. Officer Donnelly's
 8 safety, I pushed Stoddard out of the way.
 9 Q. So, what level?
 10 A. Two, my presence had already been
 11 established.
 12 Q. So, your response was a level 2 use of
 13 force.
 14 A. That's correct.
 15 Q. And will you agree with me, and you don't
 16 have to agree that you struck him, okay.
 17 I understand you don't agree with that.
 18 Would you agree with me that striking
 19 somebody in the face would not be an
 20 appropriate use of level 2 force?
 21 MR. CARLSON: Objection.
 22 A. They've changed it last year that you can
 23 strike, but I think it's on level 3. I'm
 24 not 100 percent sure whether it's 2. I'm

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1 not sure.
 2 Q. I'm talking about now April 21st, 2002,
 3 on that date would you agree with me that
 4 striking someone in the face would not be
 5 an appropriate application of level 2
 6 force?
 7 MR. CARLSON: Objection.
 8 A. If they were a threat to you, aggressive
 9 threat, the key would be aggressive
 10 threat, you could.
 11 Q. But you didn't perceive Stoddard as
 12 an aggressive threat, did you?
 13 A. Once I pushed him out of the way, he
 14 wasn't an aggressive threat until he
 15 started to get up again. He was a little
 16 more aggressive. I took that as an
 17 aggression again. That would be his
 18 second aggression. I told him to stop,
 19 stay where he was.
 20 Q. When you first entered the house and
 21 saw Stoddard take a step or two toward
 22 Donnelly, as you've testified, are you
 23 saying today that you perceived him as
 24 an aggressive threat?

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1 A. I would say that it was a threat towards
 2 Officer Donnelly's safety. He was in the
 3 immediate area of the arrest.
 4 Q. But I'm asking you a somewhat more
 5 pointed question. Did you regard him as
 6 an aggressive threat to Officer Donnelly?
 7 A. I perceived him as a threat to Officer
 8 Donnelly at that time.
 9 Q. Are you avoiding the word aggressive, or
 10 what am I missing here?
 11 A. No, I'm not avoiding the word. That's
 12 how I perceived him at that time.
 13 He was a threat to Officer Donnelly.
 14 He's stepping towards Officer Donnelly.
 15 Officer Donnelly is trying to make an
 16 arrest. I perceived that as a threat.
 17 Q. Did you perceive that as such a threat
 18 that striking Stoddard in the face would
 19 be an appropriate response to that
 20 threat?
 21 A. I did not strike Stoddard in the face. I
 22 pushed him. That was my response to that
 23 situation. I used enough force to stop
 24 his forward motion.

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1 Q. I understand that you say you didn't hit
 2 him in the face. I understand that. I'm
 3 asking you if you perceived him as such
 4 a threat that striking him in the face
 5 would have been an appropriate response?
 6 A. My reaction was, and it's the answer
 7 to your question that the push was
 8 sufficient to stop his forward progress,
 9 and he was no longer a threat at that
 10 time. That's my answer to the question.
 11 Q. Let me try it one more time.
 12 A. I don't know what to say.
 13 Q. Did you perceive him as sufficiently
 14 threatening that striking him in the face
 15 would have been an appropriate response
 16 to what he was doing, when you saw him
 17 moving toward Officer Donnelly?
 18 A. My appropriate response was correct at
 19 that time. I pushed him away, and I did
 20 not have to punch him, because when I
 21 pushed him away, he stopped. There was
 22 no need to punch anybody, or do anything
 23 else different than to push him away.
 24 Q. Now, you're aware that there's now a

1 new dispute, a new chapter in the
 2 Rubbo/Stoddard history with Stoddard
 3 accusing Rubbo of assault and battery
 4 with a deadly weapon.
 5 A. Okay.
 6 Q. The brick thing.
 7 A. Somewhat familiar with it.
 8 Q. What is your familiarity with the brick
 9 thing?
 10 A. I don't know how the sequence worked,
 11 whether Stoddard went to the police
 12 station first or to the courthouse
 13 first. At the courthouse he tried to
 14 take charges out on Rubbo. They directed
 15 them to myself, because I was the
 16 prosecutor. So I said, We need a
 17 report. I can't do anything without
 18 a report.
 19 Q. This is what you said to Stoddard?
 20 A. That's correct. So, very professional,
 21 we were both cordial. Like I said, we
 22 were cordial after the arrest even. So,
 23 I said, Let's go down to the DA's office,
 24 because they would handle it anyway.

1 Because it's assault and battery with a
 2 dangerous weapon, they would handle it.
 3 Q. This is taking place at the Hingham
 4 District Court?
 5 A. That's when I became aware.
 6 Q. That's when you first became aware?
 7 A. That's correct, through Mr. Stoddard
 8 himself.
 9 Q. Because you were on duty that day?
 10 A. As the prosecutor. I'm assigned to
 11 Hingham Court now. I wasn't sure
 12 whether he had already been to the police
 13 station, or he took my advice. I don't
 14 know how that sequence worked from
 15 there. They said that he, indeed, did
 16 need a report. So, I directed him back
 17 to the police station to file a report.
 18 Also at that time he approached
 19 me and said, If you drop the criminal
 20 case against me, I will drop the suit
 21 against you. I said, Wait a minute,
 22 George. I'm dealing with you in a
 23 professional manner. You have a lawyer
 24 and I have an attorney. We'll let the

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1 attorneys talk it over. Whether he went
 2 to the police station after that, like I
 3 said, I don't know the sequence which one
 4 he went to first.
 5 Q. And you're aware that at this point there
 6 are ABDW charges against Ruffo?
 7 A. I signed the complaints. That's my job.
 8 Q. Have you now described all the contact
 9 that you have had with Stoddard about
 10 the charges against Rubbo?
 11 A. With Mr. Stoddard, that's correct.
 12 Q. Yes?
 13 A. Yes.
 14 Q. As far as the brick thing?
 15 A. Absolutely.
 16 Q. Now, did you have any contact with Rubbo
 17 about the brick thing?
 18 A. He was walking down the street and
 19 mentioned something. I told him that
 20 there were charges taken out on him for
 21 that. That was the only conversation
 22 about that that I had with him.
 23 Q. But I think you said you signed the
 24 complaint.

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1 A. I signed the complaint, yes.
 2 Q. So, what was your understanding about
 3 the Commonwealth versus Rubbo, when you
 4 signed the complaint?
 5 A. I don't understand what you're getting
 6 at.
 7 Q. You didn't have any conversation with
 8 Rubbo --
 9 A. No.
 10 Q. -- about the brick incident --
 11 A. No.
 12 Q. -- when you signed the complaint?
 13 A. No, I did not.
 14 Q. So, where did you get your information?
 15 A. I got it from Mr. Stoddard, and then
 16 a police report was generated with a
 17 complaint and I signed the complaint,
 18 assault with a brick against Stoddard,
 19 assault and battery with the car, or the
 20 truck, or whatever he had, pickup truck.
 21 Q. So, you're signing of the complaint
 22 against Rubbo was based on a police
 23 report?
 24 A. That's correct. Every time I sign a

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1 complaint, they're based on a police
 2 report.
 3 Q. Did you have any conversation with the
 4 officer who generated the police report
 5 about Rubbo, as far as the brick thing is
 6 concerned?
 7 A. I think it's Officer Zielinski. He said
 8 he took complaints out against both of
 9 them.
 10 Q. But did he say anything about what Rubbo
 11 told him?
 12 A. Not really. He just said when he talked
 13 to them, they both didn't want to take
 14 charges out on each other, but he felt
 15 it was best to take the charges out.
 16 Q. In some initial disclosures that your
 17 attorney provided in this federal
 18 lawsuit -- that's one of the things
 19 that we do -- there are some individuals
 20 listed, who might have information
 21 pertinent to this case. Do you know
 22 who Fred Lockhart is?
 23 A. He lives right across the street from
 24 Stoddard.

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1 Q. And do you have any idea what information
 2 he's suppose to have about this case?
 3 A. He could say that Stoddard and I had
 4 conversation outside the house.
 5 Q. Do you have any reason --
 6 A. I think he was standing there the whole
 7 time that whole incident took place.
 8 Q. Do you have any reason to believe that
 9 he could see inside the house?
 10 A. No.
 11 Q. Do you think he could not see inside the
 12 house?
 13 A. I don't know whether he did or not.
 14 Q. And what about Officer James Simpson, did
 15 he have anything to do with the arrest?
 16 A. I don't know if he came, maybe a
 17 transport. I don't know. I really don't
 18 know.
 19 Q. And how about Officer Ronald Ever, do you
 20 know if he had anything to do with the
 21 arrest?
 22 A. He was the dispatcher at the time.
 23 Q. On April 21st?
 24 A. I believe that's correct. He would have

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1 been the dispatcher. Simpson could have
 2 been too, though. They both could have
 3 been in there. I'm not sure where
 4 Simpson comes into play.
 5 Q. Do you have any idea what the name of
 6 the driver for All-Make towing was?
 7 A. No, I don't know him. I never even heard
 8 of the tow company.
 9 (Off the record.)
 10 (Back on the record.)
 11 MR. SHARP: Let's mark this as
 12 Exhibit No. 2.
 13 (Plaintiff's Exhibit No. 2,
 14 Photograph, marked for identification.)
 15 Q. I'll ask you, Officer Somers, if you
 16 recognize what that is portraying?
 17 A. It looks like Mr. Rubbo's pickup truck
 18 and Miss Kelly's truck.
 19 Q. Kelly's is the black one?
 20 A. Correct.
 21 Q. And the guy in the background is Officer
 22 Drenzo?
 23 A. Drenzo.
 24 Q. What do you know, if anything, of Officer

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1 Drenzo's relationship with Rubbo and
 2 Stoddard?
 3 A. I would say he has no relationship at
 4 all.
 5 Q. And do you know him to be friendly with
 6 Rubbo?
 7 A. No. He's the same demeanor with
 8 everybody. He's a friendly guy.
 9 MR. SHARP: This Exhibit 3.
 10 (Plaintiff's Exhibit No. 3,
 11 Photograph, marked for identification.)
 12 Q. Exhibit 3, you would agree with me that's
 13 just a closer view of Exhibit 2, and with
 14 Drenzo out of the picture, right?
 15 A. That's correct.
 16 MR. SHARP: Let's mark this.
 17 (Plaintiff's Exhibit No. 4,
 18 Photograph, marked for identification.)
 19 Q. How would you describe Exhibit No. 4?
 20 A. That's Mr. Rubbo's truck in front of his
 21 driveway.
 22 Q. And you see that Rubbo's truck is
 23 blocking access to what you might think
 24 is George Stoddard's driveway, correct?

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1 A. That's not a driveway. It's just a part
 2 that goes between the houses. He doesn't
 3 have garage or anything.
 4 Q. A parking area?
 5 A. Up until Miss Kelly came, he never parked
 6 his car there. He always parked it on
 7 the opposite side of the house, or on the
 8 street. Looking at the house, it would
 9 be way to the left over here.
 10 Q. Way to the?
 11 A. His house would be -- looking at.
 12 Q. From the front.
 13 A. Looking at his is straight on.
 14 Q. His truck in Exhibit No. 4 is pointing
 15 toward his house, right?
 16 A. Yeah, that's correct. More or less,
 17 that's correct.
 18 Q. More or less?
 19 A. That's correct.
 20 Q. And you say that Rubbo never parked that
 21 way.
 22 A. No. Stoddard, you said it would be
 23 blocking his driveway. There is no
 24 driveway. The question was Stoddard

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1 usually parks his car over here. That's
 2 what I thought you meant. I'm sorry, I
 3 misunderstood.
 4 Q. Stoddard parked his car elsewhere.
 5 A. Over here this side of his house. I
 6 misunderstood what you were talking
 7 about.
 8 MR. SHARP: Let's mark this.
 9 (Plaintiff's Exhibit No. 5,
 10 Photograph, marked for identification.)
 11 Q. That's Deborah Kelly's truck in
 12 Stoddard's parking area, right?
 13 A. Like I said, I don't know. They usually
 14 park on the street this way. They park
 15 with the street, Stoddard and Kelly
 16 usually always parked with the street.
 17 Q. And before Deborah Kelly came on the
 18 scene --
 19 A. Correct.
 20 Q. -- whenever that was, did you ever
 21 observe Rubbo to park his truck the
 22 way it's portrayed in Exhibit No. 4?
 23 A. No, not that I can say.
 24 Q. You might notice; you might not.

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1 A. Correct.
2 Q. After Deborah Kelly showed up on the
3 scene, did you ever see Rubbo park his
4 truck in the way that's depicted on
5 Exhibit No. 4?
6 A. Once in a blue moon, maybe. I have seen
7 it on the street, yes, instead in the
8 driveway like that picture, but how many
9 times I could not tell you.
10 MR. SHARP: Let's mark Exhibit
11 No. 6 and Exhibit 7.
12 (Plaintiff's Exhibit No. 6,
13 Photograph, marked for identification.)
14 (Plaintiff's Exhibit No. 7,)
15 Photograph, marked for identification.)
16 Q. In Exhibit 6 we have a photograph of
17 a lot of snow and somebody apparently
18 talking to a police officer. Do you
19 have any idea who that is talking to
20 the police officer, and who the police
21 officer is?
22 A. I can't make out a face.
23 Q. You don't have any idea who it is?
24 A. No, I can't make it out.
25 Q. That's fine. In Exhibit 6 there is

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1 somebody depicted there in a blue jacket
2 of some sort. Do you have any idea who
3 that is?
4 A. That's the little boy that used to live
5 across the street from me. His last name
6 is Bates.
7 Q. Bates?
8 A. Yeah. They don't live there anymore.
9 I don't know where they live. They've
10 moved since.
11 Q. Did you ever observe somebody staking
12 out the property, I mean driving stakes,
13 doing a survey of the Rubbo or Stoddard
14 property?
15 A. I'm not sure if they were doing it
16 for the water across the street from me.
17 That's not adjacent to them. I don't
18 know.
19 Q. Did you ever observe Rubbo prevent
20 someone from laying out stakes?
21 A. No.
22 Q. When you first saw Stoddard, when you
23 entered the house on April 21st, 2002,
24 did he have any cuts on his face?

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1 A. Not that I remember. I believe not.
2 Q. You described a conversation that you
3 had with Stoddard right after Kelly was
4 arrested.
5 A. Well, he said he thought that she did
6 strike Donnelly with the bumper of the
7 truck. He told me that.
8 Q. Anything else?
9 A. Just small talk. That's all.
10 Q. Just beyond that it was small talk.
11 A. Small talk, correct.
12 Q. And I think you said you had one other
13 conversation with Stoddard about this
14 brick thing.
15 A. That's correct.
16 Q. Have you had any other conversations
17 with Stoddard since April 21st, 2002
18 involving Rubbo, or the arrest of Deborah
19 Kelly, or the land dispute?
20 A. No, not that I can remember.
21 MR. SHARP: I think that's it
22 for me.
23 MR. CARLSON: No questions.
24 (Whereupon deposition concluded)

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1 ERRATA SHEET
2 CHANGES TO THE DEPOSITION OF:
3
4 INSTRUCTIONS TO WITNESS: 1) Please note
5 any desired corrections to your testimony
6 by page and line number. 2) Enter text
7 as it appears in the transcript. 3)
8 Enter text as it should appear.
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10 PAGE LINE SUGGESTED CORRECTION
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STODDARD V. SOMERS

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SIGNATURE PAGE

I, , do
hereby certify that I have read the
foregoing transcript of my testimony, and
further certify that said transcript is a
true and accurate record of said
testimony.

Dated at , this
day of , 2003

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COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

I, JUDITH R. SIDEL, a Registered
Professional Reporter and Notary Public,
in and for the Commonwealth of Massachusetts,
do hereby certify that:

RICHARD SOMERS, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that such
deposition is a true and accurate record
to the best of my knowledge, skills and
ability, of the testimony given by such
witness.

IN WITNESS WHEREOF, I have
hereunto set my hand and affixed my
Notarial Seal this 12th day of August
2004.

JUDITH R. SIDEL
NOTARY PUBLIC

Commission expires:
June 5, 2009.